

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

25-2

64

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

RECEIVED

JUN 12 1970

CLERK OF THE UNITED
STATES COURT OF APPEALS

No. 24,209

United States Court of Appeals
for the District of Columbia Circuit

SARL ELECTRONICS

FILED JUN 12 1970

Appellant (Plaintiff)

v.

Nathan Paulson
CLERK

VETERANS OF FOREIGN WARS
OF THE UNITED STATES,

Appellee (Defendant)

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

APPELLANT'S APPENDIX

Of Counsel for Appellant

TRAMMELL, RAND & NATHAN
1730 K Street, N.W.
Washington, D.C. 20006

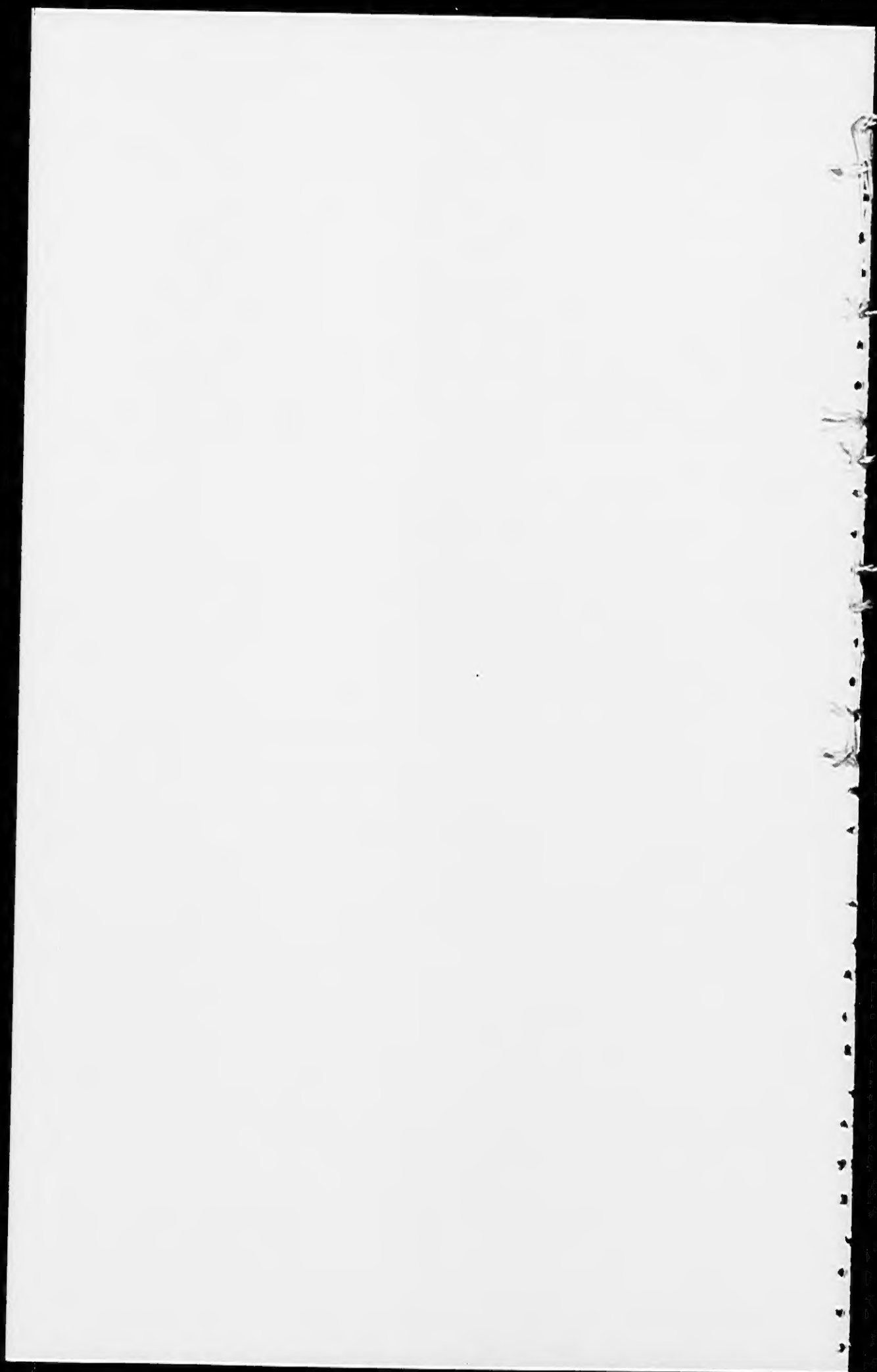
WARREN E. MAGEE

1730 K Street, N.W.
Washington, D.C.

Attorney for Appellant

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APPELLANT'S APPENDIX

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
Civil Division

SARL ELECTRONICS, LTD., :
a corporation
Room 606,
Gloucester Building :
Hong Kong.

Plaintiff. :

v. : Civil Action No. 2924-67

VETERANS OF FOREIGN WARS :
OF THE UNITED STATES
a corporation
200 Maryland Avenue, N.E. :
Washington, D.C.,

Defendant. :

RELEVANT DOCKET ENTRIES

1967.

- Nov. 14. Complaint, appearance.
Dec. 1. Answer of deft. to complaint; Jury demand;
Appearance of Wilmer S. Schantz, Jr.
Dec. 1. CALENDARED.
Dec. 5. Motion of deft. for security for costs.

1968

- Jan. 16. Interrogatories of deft. to plttf.
Jan. 17. Order for security for costs, \$50.00 cash or
\$100.00 undertaking within 20 days. McGuire, J.

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- Jan. 22. Deposit \$50.00 for security for costs by pltffs. per order of 1-17-68.
- Apr. 1. Called.
- July 8. Answer of plaintiff to interrogatories. Pretrial Examiner.
- Sept. 5. Motion of pltff. to stay Rule 13.
- Sept. 16. Request of deft. for admission of fact and genuineness of documents.
- Sept. 24. Order staying Rule 13 until April 1, 1969. Robinson, J.
- Oct. 17. Answers of defts. to requests for admissions of fact and genuineness of documents.

1969

- Apr. 18. Certificate of readiness by deft.
- Apr. 23. Objections of deft. to certificate of readiness.
- May 16. Recommendation sustaining plaintiff's objection to certificate of readiness; to be placed on ready calendar as of July 15, 1969. Pretrial Examiner.
- Dec. 12. Pretrial Proceedings. Asst. Pretrial Examiner.

1970

- Feb. 26. Withdrawal of jury demand per counsel.
- Feb. 26. Hearing begun; concluded; finding for the defendant by direction of the Court (Order to be presented). Hart, J.
- Feb. 27. Order granting the defendant's motion for judgment and judgment for defendant. Hart, J.
- Mar. 9. Notice of Appeal by Pltff. from Order of 2-27-70.
-

[Filed: Nov. 14, 1967]

[T.G.W.]

COMPLAINT

(FOR UNPAID BILLS FOR MERCHANDISE, EQUIPMENT AND MACHINE RENTAL COLLECTIONS)

The complaint of SARL ELECTRONICS, LTD. alleges:

1. Plaintiff SARL ELECTRONICS, LTD. is a corporation with offices in Hong Kong.

2. The Defendant, VETERANS OF FOREIGN WARS OF THE UNITED STATES, is a corporation and has its offices within the District of Columbia and does business in the District of Columbia, throughout the United States and elsewhere, including in Vietnam.

3. The Defendant established a club in Saigon, Vietnam, and did business there under the name and style of "Saigon Post 8316, Veterans of Foreign Wars of the United States" at all times pertinent herein.

4. Defendant purchased from Plaintiff corporation various items of merchandise and said merchandise was shipped to, and accepted by the Defendant at its Saigon, Vietnam Post No. 8316 on the dates and for the amounts as more fully described in invoices amounting to the total sum of \$39,928.38. Attached hereto are photocopies of the invoices which have been designated as Plaintiff's Exhibits A and B, respectively, which are hereby referred to and made a part of the complaint by reference.

5. Numerous demands have been made upon the Defendant for the payment of the sum of \$39,928.38, but this sum and no part thereof has been paid by the Defendant to the Plaintiff and the entire sum is due and owing, including interest thereon at the rate of 6% per annum. As a result, the Defendant is justly indebted to, and owes the Plaintiff the sum of \$39,928.38, together with interest thereon at the rate of 6% per annum from the date each such shipment of merchandise was received and from the dates said collections were made.

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WHEREFORE, the Plaintiff demands judgment against the Defendant in the sum of \$39,928.38, together with interest thereon at the rate of 6% per annum from the date each shipment of merchandise was received and from the date each collection was made by the Defendant for Plaintiff's account, besides interest and costs.

TRAMMELL, RAND & NATHAN
1730 K Street, N.W.
Suite 308
Washington, D.C. 20006
[296-7840]

Of Counsel:

Warren E. Magee
Thomas G. Laughlin
1730 K Street, N.W.
Washington, D.C. 20006

EXHIBIT A

[Exhibit A to Complaint is identical to Plaintiff's Exhibit 2 and appears at Appendix pages 48-58.]

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EXHIBIT B

STATEMENT

SARL ELECTRONICS

ROOM 606
GLOUCESTER BLDG
HONG KONG

PLEASE MAIL YOUR CHECKS
TO THE BANK - NOT TO OUR
HONGKONG OFFICE.

Veteran Foreign War
Saigon Post 8316
APO 96243, U.S. Forces
Saigon, Vietnam.

HONGKONG 20th October 1966

DATE	INVOICE NO.	DESCRIPTION	AMOUNT US \$
------	-------------	-------------	--------------

~~BALANCE AT THE LAST STATEMENT~~

LIST OF MERCHANDISES ALREADY DELIVERED TO CLUB

DO # Date	P.O.	Inv.	Description	US\$
208 & 216 & 234 4/12/66	LP	1398	Chit Book & Guest Book	✓ 1,148.00 ✓
211 4/15/66	LP	1495	150 ea Dining Chair	✓ 1,167.00 ✓
263 6/14/66	830	1299	1 ea Ice Making Machine (1645.00)	✓ 1,957.92 ✓
290 3/3/66	829	1300	2 ea Beer Cooler (2,305.49)	✓ 2,305.49 ✓
291 8/3/66	879	1173	1 ea Reach In Refrigerator & 1 ea " " Freezer (2,611.70)	✓ 2,611.70 ✓
294 8/4/66	1029	1331	2 ea Cecileware Butane Gas (1,551.66)	✓ 1,551.66 ✓
295 8/4/66	1037	1340	1 ea Stonite Sandwich (984.85)	✓ 984.85 ✓
387 9/27/66	1019	2042	1 ea Kaiwai Piano Cat (629.56)	✓ 629.56 ✓
4/21/66		W/O # 7018	35 M Slugs Imprinted	✓ 1,820.00 ✓
316 8/15/66	858	2113	62 M Slugs Imprinted (2,945.00)	✓ 2,945.00 ✓
9/22/66	857	1982	10 ea Records 45 RPM	✓ 12.60 ✓
8/22/ 8/12/66		W/O # 4731	500 ea Slugs	✓ 28.50 ✓
7/22/66	857	1523	10 ea Records	✓ 12.60 ✓
7/26/66		W/O # 4534	1 ea Coin Counter	✓ 305.60 (Con.)

Payment in settlement may only be made by depositing the amount to the account of : SARL ELECTRONICS with Bank of America. Westwood Branch 1099 Westwood Boulevard, Los Angeles 24, California, U.S.A. and forwarding to us a copy of deposit letter.

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STATEMENT

SARL ELECTRONICS

ROOM 606
CLOUCESTER BLDG
HONG KONG

PLEASE MAIL YOUR CHECKS
TO THE BANK - NOT TO OUR
HONGKONG OFFICE.

Page -2-

Veteran Foreign War
Saigon Post 8216
APO 96243, U.S. Forces
Saigon, Vietnam

HONGKONG - 20th October 1966

DATE	INVOICE NO.	DESCRIPTION	AMOUNT US \$
INVOICE AS PER LAST STATEMENT			
6/4/66	W/O # 7119	5 ea Coin Dispenser	✓ 72.00 ✓
5/13/66	W/O # 7073	5 Coin Wrapper	✓ 10.80 ✓
4/30/66	Inv # 1081	10 ea Records	✓ 12.60 ✓
			17,575.90
			=====

2
25.43
334.60
334.10

2
82.80

13,986.20

3172.80

- Payment in settlement may only be made by depositing the amount to the account of : SARL ELECTRONICS with Bank of America. Westwood Branch 1099 Westwood Boulevard, Los Angeles 24, California, U.S.A. and forwarding to us a copy of deposit letter.

[Filed: Dec. 1, 1967]

ANSWER OF DEFENDANT

First Defense

The complaint herein fails to state a cause of action against the defendant upon which relief may be granted.

Second Defense

1. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph one of the complaint.

2. The defendant admits it is a corporation but denies all remaining allegations contained in Paragraph two of the complaint.

3, 4 and 5. The defendant denies the allegations contained in Paragraphs three, four and five of the complaint.

WHEREFORE, the defendant, having fully answered the complaint herein, prays that the same be dismissed with costs against the plaintiff.

/s/ Wilmer S. Schantz, Jr.
Attorney for Defendant
3600 M Street, N.W.
Washington, D.C. 20007
FE 3-6262

JURY DEMAND

The defendant herein requests a trial by jury on all issues herein.

/s/ Wilmer S. Schantz, Jr.

PRETRIAL STATEMENT OF THE PLAINTIFF

Type of Action

An action on a contract for unpaid bills for merchandise, equipment and machine rental collections.

Defendant, Veterans of Foreign Wars of the United States, is a corporation, granted pursuant to an Act of Congress, 36 U.S.C.A., Sec. 111 through 120, created for the purposes set out in 36 U.S.C.A. 113, and may be sued under 36 U.S.C.A. 114.

Defendant corporation chartered, managed and operated Saigon Post 8316, Veterans of Foreign Wars of the United States.

Defendant purchased from plaintiff merchandise and equipment and entered into machine rental agreements on the dates and for the amounts more fully described in the invoices attached to plaintiff's Complaint in the total sum of \$39,928.38, which invoices have been designated as Exhibits A and B respectively to plaintiff's Complaint.

Demands of the plaintiff for payment by the defendant have been refused and as a result the defendant is indebted to the plaintiff in the sum of \$39,928.38, with interest thereon at 6% per annum from the date of each shipment of merchandise and from the dates of the collections made.

Damages

Pursuant to billings and statements of account rendered, Exhibits A and B to the Complaint, the sum of \$39,928.38, with interest thereon at 6% per annum from the date of shipment and per date of each collection, is owed by the defendant to the plaintiff.

Stipulations

1. Defendant acts pursuant to the provisions of 36 U.S.C.A., Sections 111 through 120.
2. Defendant granted a charter to Saigon Post 8316.

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3. Defendant produce all correspondence and documents relative to the chartering, modification or any changes in the Saigon Post 8316.

4. The annual report for the years 1966 and 1967 made by the defendant to the Congress, pursuant to 36 U.S.C.A. 118, be produced and stipulated for use in evidence.

5. Notwithstanding the receipt of the invoices attached to the Complaint of plaintiff, Exhibits A and B, the defendant has not paid any sum or sums on account of these invoices.

6. Plaintiff requests a specific trial date because witnesses may have to be brought from the Far East.

Number of Witnesses

Four.

Time of Trial

Two days.

TRAMMELL, RAND & NATHAN

By _____

Warren E. Magee

Counsel

1730 K Street, N.W.

Washington, D.C. 20006

PRETRIAL STATEMENT OF DEFENDANT

The defendant, Veterans of Foreign Wars of the United States, a corporation:

1. Admits that it is a corporation.
2. Denies that it does or at any time relevant herein did business in Vietnam.
3. Denies that it, or any agent, servant or employee of the Veterans of Foreign Wars of the United States, pur-

chased or ordered any merchandise or services from the plaintiff, Sarl Electronics, Ltd., a corporation, at any time.

4. Denies that it, or any agent, servant or employee of the Veterans of Foreign Wars of the United States received any merchandise or services from the plaintiff, Sarl Electronics, Ltd., a corporation, at any time.

5. Denies that it is indebted to plaintiff, Sarl Electronics, Ltd., a corporation, in any amount whatsoever.

/s/ Wilmer S. Schantz, Jr.
Attorney for Defendant
Journal Building
McLean, Virginia 22101
356-2666

PRETRIAL PROCEEDINGS

December 12, 1969.

Complaint for money due for merchandise and equipment furnished and for machine rental collections.

UNDISPUTED FACTS

Defendant, Veterans of Foreign Wars of the United States, is a corporation.

Defendant granted a charter to Saigon Post No. 8316 in Saigon, Viet Nam.

On or about December 1, 1966, defendant notified members of Saigon Post No. 8316 that its charter had been cancelled by defendant.

The allegations of plaintiff are fully set forth in Plaintiff's Pretrial Statement, attached hereto and made a part hereof.

DEFENDANT'S allegation are fully set forth in defendant's pretrial statement attached hereto and made a part hereof.

STIPULATIONS

Facts under UNDISPUTED FACTS.

It is stipulated that the following may be admitted without formal proof of authenticity, subject to all other objections:

None.

No stipulation is made with respect to statement of account, identified as P's PT Exhibits No. 1 and 2 (originals of exhibits A and B attached to complaint).

Counsel agree to exchange and to file with the Clerk on or before December 17, 1969, the names and addresses of all possible witnesses known to them, including experts, exclusive of impeachment or rebuttal witnesses.

If either counsel should thereafter learn of any additional witnesses prior to trial, he will file a supplemental witness list with the Clerk not later than one week prior to trial.

The Examiner has requested counsel to come to the trial with the maximum authority to settle the case that will be allowed them by their principals.

If either counsel proposes to rely on any provisions of foreign law, the original contract having been made in Saigon or Hong Kong, he will furnish opposing counsel and file with the Clerk not later than 3 days prior to trial, a memorandum of the foreign law upon which he relies.

THIS ACTION WILL BE PLACED ON THE DAILY ASSIGNMENT MONDAY, DECEMBER 15, 1969.

/s/ Bunton
Asst. Pretrial Examiner

TRIAL ATTORNEYS:

/s/ Warren E. MaGee For Plaintiff

/s/ Wilmer S. Schantz, Jr. For Defendant

ORDER

This cause having come on for trial on February 26, 1970, before this Honorable Court, sitting without a jury, and the plaintiff having presented its evidence and having rested, and the defendant having moved the Court for judgment for the defendant, and the Court having heard argument of counsel for plaintiff and defendant, it is by the Court this 27th day of February, 1970,

ORDERED that defendant's Motion for Judgment for the Defendant be, and the same hereby is, granted, and Judgment is entered for the defendant.

/s/ George L. Hart, Jr.
Judge

[3] EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

THE DEPUTY CLERK: Case of Sarl Electronics v. Veterans of Foreign Wars of the United States.

MR. SCHANTZ: Ready for the defendant.

MR. MAGEE: Plaintiff is ready.

THE COURT: Mr. Magee, I understand what you claim. You have a witness here from out of town, so I think you might just put him on.

MR. MAGEE: Yes, sir. Your Honor understands what our case is. It is on account of goods sold and delivered to the Post, which we contend was merely an operation of the national organization of the Veterans of Foreign Wars pursuant to the Act of Congress.

So with Your Honor's permission, I will call our first witness.

ANTHONY G. RENIERI

called as a witness by the Plaintiff, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MAGEE:

Q. Would you please state your name and your address in the United States and your foreign address? A. Anthony G. Renieri.

My address in the States is 1208 - 95th Avenue in New York City. My address in Seoul, Korea right now is [4] U.N. Village, Apartment 506, Seoul, Korea.

Q. You have had some military experience in the Far East, have you not? A. Yes, I have been in the Far East since 1953.

Q. Where did you serve?

* * *

A. I was in Korea in 1953 and I have been overseas since 1953.

I got out of the service in 1958 and since 1958 I have been working as a salesman for various organizations selling to the military.

Q. In 1966 were you employed by Sarl Electronics? A. Yes, I was employed as an area supervisor or sales manager.

Q. And where is Sarl Electronics, Inc.? [5] A. In Hong Kong.

Q. Did there come a time when you in connection with your duties went to Viet Nam? A. Yes, I was in Viet Nam December 1965 until August 1969.

Q. Did there come a time when you were approached by anyone representing the Veterans of Foreign Wars while you were in Viet Nam? A. Yes; in the beginning of 1966, I'd say about January, the beginning of February, Charles Phillips.

Q. Who is Charles Phillips? A. Charles Phillips approached me with a charter from the VFW in the United States, in which he was a commander of the charter post that was going to be established in Viet Nam, in Saigon.

Q. And what did Mr. Phillips request that you do? A. Mr. Phillips asked if my company would extend credit

in various forms of merchandise and services so that they could get this club, the VFW club off the ground.

Q. And what was the rest of the conversation with Mr. Phillips? What would have been his title at that time?

A. He was the commander of the VFW Saigon Post.

Q. There has been produced just for the record as Exhibit D during the course of these proceedings a document which was furnished by counsel for VFW. Do you recognize this? [6] A. Yes, this is a charter for a VFW club.

MR. MAGEE: Except for the names, Your Honor, this was produced by counsel for the defendant and I would like to offer it in evidence. It is in blank.

MR. SCHANTZ: I have no objection.

For the record, Your Honor, this is a charter for a post of the Veterans of Foreign Wars.

THE COURT: Admitted.

THE DEPUTY CLERK: Plaintiff's 1.

(Plaintiff's Exhibit No. 1 marked for identification and received in evidence.)

BY MR. MAGEE:

Q. You were describing the discussion you had with Commander Phillips who stated he had a charter from the Veterans of Foreign Wars. Continue and tell us the extent of this conversation.

* * *

[7] A. Mr. Phillips wanted to know if we could extend credit in various forms such as merchandise and services, as I said, to get this club off the ground.

I told him I would check with my sales manager, Mr. Halberg, and let him know in a few days.

I checked with my people and they said it sounded like it would be a good organization to go with.

Q. Prior to this conversation which you had with Mr. Phillips had you represented groups that had dealt with

other clubs of the Veterans of Foreign Wars in the Far East? A. I'm sorry, you have to say that again.

Q. I said, had you had dealings with other clubs of the Veterans of Foreign Wars in the Far East prior to seeing Mr. Phillips in Saigon? A. No, not myself.

Q. Had your organization had experience with clubs? A. Yes.

Q. I am particularly referring to the club in Okinawa. A. Yes, we had a very good working relationship with a VFW club in Okinawa which did a very fine business and I think they did quite an extensive bit of business with our [8] company through Tokyo.

Q. In dealing with Mr. Phillips, when you talked to him as the commander of this newly chartered post of the Veterans of Foreign Wars, what did you report to him that your company, the plaintiff in this case, was willing to do?

A. I told Commander Phillips that we would back the VFW in that we would allow them to purchase just about what was needed to get a club off the ground in the way of beverage coolers and ice machines, tables, chairs, bar equipment, entertainment equipment such as amusement machines, beer and whiskey also; that we would go the route with him because we knew that the club would be a worthy thing and we would make out on it.

Q. In dealing with Mr. Phillips, I want to be specific, were you dealing with Mr. Phillips as an individual or as a representative of the Veterans of Foreign Wars?

* * *

A. I have never met Mr. Phillips or I never heard of [9] him before he approached me with this charter and, to tell you the truth, the only reason that we did do any business, we did it for the fact that it was the VFW and he did have a charter from the United States organization, the national chapter.

Q. After you contacted your immediate superior what then followed, what arrangements were made with Commander Phillips? A. I spoke to Commander Phillips about

two or three times, setting up talks and finding out just what he wanted to open this club, what he needed.

Subsequently, sometime in late February, I wrote up purchase orders and had Commander Phillips sign them as purchases for the VFW and he signed them, I think—

* * *

[10] THE COURT: What have you got there?

MR. MAGEE: We have the statement of account with each purchase order which has been submitted to them and we know each item that was delivered.

May I have this identified?

THE COURT: Yes, Plaintiff's 2.

THE DEPUTY CLERK: Plaintiff's Exhibit No. 2.

(Plaintiff's Exhibit No. 2 marked for identification and received in evidence.)

THE WITNESS: Can I say something?

THE COURT: Not until somebody asks you a question.

[11] THE WITNESS: Those are the purchase orders.

MR. MAGEE: Yes, we have some of them, Your Honor, but not all of them.

BY MR. MAGEE:

Q. Prior to the issuance of the purchase orders and the delivery of the equipment and other things which were ordered by the VFW, what did you learn about the arrangement which was set up for the operation of this post of the Veterans of Foreign Wars in Viet Nam? How was this to operate? A. I don't quite understand the question.

Q. For example, there was a post set up, they had a charter, is this correct? A. Yes.

Q. Where was the operation located in Viet Nam? A. The post was located at a place called Chai Long, 87 Chai Long, which is a large villa-type affair. The post was located there and this club was located at the same premises. They were one and the same.

Q. Was a board set up, a board of trustees under this charter which has been admitted in evidence, to operate the club? A. Yes, a board of trustees was elected by the general membership.

Q. And who were the board of trustees? A. I served on the board of trustees with two other [12] people.

Q. I show you what has been—which I will now have marked as our next exhibit.

THE DEPUTY CLERK: Plaintiff's Exhibit 3 for identification.

MR. SCHANTZ: I have no objection to this. I can't read this. Part of the second page is illegible.

MR. MAGEE: This is the best we could obtain. The original is in possession of the defendant.

THE COURT: It is admitted.

(Plaintiff's Exhibit No. 3 marked for identification and received in evidence.)

BY MR. MAGEE:

Q. I show you now what has been introduced in evidence as Plaintiff's 3 and ask you if you can identify this as the lease agreement which the board of trustees of the VFW club signed for the post? A. Yes, this is what we signed as a lease agreement.

Q. The other two members on the board signed and also the commander signed, Commander Phillips, is this correct? A. Yes.

Q. Then the operations of the post was conducted in one building, this building which you leased, is this correct? A. The same building, yes.

[13] THE COURT: Did you lease the building?

THE WITNESS: I, myself, sir? No, I was on the board of trustees.

THE COURT: You were on the board of trustees of the VFW?

THE WITNESS: Yes, sir.

MR. MAGEE: They elected him because they were putting up the money to finance it and he was put on there to see the equipment was delivered to the club. We will get into this a little later.

BY MR. MAGEE:

Q. As purchases were authorized what was the procedure that the board of trustees functioned in in regard to this matter? A. In that purchases were made, the board of trustees was a committee to oversee the general operation in that food and liquor and amusement machines and everything else was functional and that there were no gripes by the membership.

I think if any members did have gripes they would come to the board of trustees. It was sort of an overseer committee.

Q. You have indicated that invoices were issued.

MR. MAGEE: Let's first have the next group marked for identification. We do have some of these, Your Honor, we don't have all of them.

[14] THE DEPUTY CLERK: Plaintiff's Exhibit 4 for identification.

(Plaintiff's Exhibit No. 4 marked for identification.)

MR. MAGEE: Bearing in mind the original of these are in the possession of the defendant.

THE COURT: I am beginning to wonder why the witness isn't a co-defendant.

MR. MAGEE: Your Honor well knows that when money is loaned to corporations of this sort, when they ask a person to sit on the board while their money is being expended, they do it.

I have sat on boards, I don't know whether Your Honor has, where we lend money to corporations, and this is not an uncommon practice.

THE COURT: All I can say is if you do this with unincorporated associations you better be careful.

MR. MAGEE: We take the position we are not dealing with an unincorporated, we are dealing with a national organization under its charter and we will go into a little more detail on that later.

THE COURT: All right.

MR. SCHANTZ: No objection to the admission of Plaintiff's Exhibit 4.

THE COURT: All right.

[15] (Plaintiff's Exhibit No. 4 received in evidence.)

BY MR. MAGEE:

Q. I show you what has been introduced in evidence as Plaintiff's Exhibit 4 and I ask you to identify this material and describe what these are. A. Invoices for goods delivered.

The next several are actual purchase orders that were spoken of before, signed by Commander Phillips.

Q. And he signs them in what capacity? A. As a commander of the VFW.

MR. SCHANTZ: Your Honor, I think the documents speak for themselves.

THE COURT: Yes; Let's see them.

Q. You have examined these invoices before you came to court, have you not? A. Yes, I have.

Q. Would you explain to His Honor whether or not the goods and articles described in these invoices were actually delivered by the plaintiff in this case to Viet Nam? A. Yes, all the goods on this first invoice, chit books and guest chits, tables and chairs, were delivered to the actual club. I, myself, have seen them delivered.

Q. Were they actually installed and used by the club? A. They were installed and used.

[16] Q. Going back to Plaintiff's Exhibit 2, which is a statement of account by Sarl Electronics to the Veterans of

Foreign Wars club, I ask you to briefly describe to His Honor what is involved in these purchases and whether these goods were in fact also delivered to Viet Nam and installed in the VFW post there? A. On pages 1 through 10, these are collection reports on amusement machines and juke boxes that were installed in the VFW. By a collection report I mean the machines were put in on a concession basis, 50-50; that is, 50 percent for Sarl Electronics and 50 percent for the VFW, the reason being that the VFW didn't have any money to purchase these machines so we outright put machines in on a concession basis and received 50 percent of the share and the VFW received 50 percent.

THE COURT: What VFW didn't have any money?

THE WITNESS: Are you asking me, sir?

THE COURT: Yes.

THE WITNESS: VFW Post 8316.

THE COURT: They were the ones that didn't have any money?

THE WITNESS: Yes, sir.

THE COURT: What were these amusement machines?

THE WITNESS: Pinball machines, flipper machines, juke boxes and slot machines.

[17] BY MR. MAGEE:

Q. Do you have the total, for example, of the types of machines that were actually furnished and placed in the club or post? A. These are slug machines, all of them.

THE COURT: Is that the same as a slot machine?

THE WITNESS: Yes. It is not cash used, it's slugs, minted slugs.

THE COURT: What happens with the slugs?

THE WITNESS: In what respect?

THE COURT: Suppose you hit the jackpot and get a lot of slugs, what do you do with them?

THE WITNESS: You can cash them in for drinks, chit books, cash, MPC, military payment certificates that are only good in military clubs.

Q. In other words, this is an operation within the military economy and you use military payment certificates in lieu of money? A. Yes, there is no American money used.

Q. For example, the machines, where you have a payoff, these machines are operated by slugs. How were the slugs obtained? A. The slugs were purchased from us, first of all, and issued to the club. The club then took the slugs and sold them as customers came up and needed them, either by MPC, which [18] is military payment certificates, or from their guest chits which were purchased with MPC, and they were used in the machine and played.

Q. Who installed the machines and kept them in operative condition after they were put in the clubs? A. That is part of our contract. We installed the machines in the clubs and kept them operational and kept them working, at no charge to the club. It was part of the agreement.

Q. Coin operated game machines include many things other than slot machines? A. We installed quite a bit of equipment. There is a complete list here. Just a few of the items were ice making machines, refrigerators, freezers, butane gas stoves, sandwich bar, piano, records, table and chairs, coin dispenser. All this was to get the club off the ground and rolling.

Q. During the—

MR. MAGEE: We offer No. 2 in evidence. I don't think there is any objection to that.

BY MR. MAGEE:

Q. Do you have a breakdown on what was actually covered in the way of equipment as shown on Plaintiff's Exhibit 2, the statement of account on the pink sheets?

A. The pinball machine was just pinball and flipper. The operation netted \$5,282.98.

On the juke box operation it was \$506.65.

[19] Slot machines, it was \$16,562.95.

For a grand total of \$22,352.48.

Q. Do you have your totals for the other type of fixed equipment? A. That is on the pink sheet. It is seventeen-thousand-some-odd dollars. I don't remember the exact figure.

Q. After these arrangements were made was your club ever visited by representatives of the National Veterans of Foreign Wars of the United States? A. Yes, a national representative, Mr. Surer, came out, I think, sometime in April.

Q. What was his position with the national organization? A. He was the national representative from headquarters.

MR. SCHANTZ: What was his name?

THE WITNESS: Surer, I believe it was.

BY MR. MAGEE:

* * *

Q. What occurred when Mr. Surer representing the national headquarters came to the operation of the post in Viet [20] Nam? A. He naturally came to see the operation. He came out to Viet Nam and came to the post and congratulated everyone on the job they were doing, he was happy with the way the post looked, the club was clean, it was serving members, there was activity, the food was good, and he commended everybody on the job we were doing.

Q. In connection with this club explain a little something to His Honor about how it operates and who comes into the club and uses the facilities. A. Well, this club was very well placed geographically. It was downtown in Viet Nam.

You had several places that were military camps or military BEQs, which are billeting enlisted men or NCOs. They don't have mess facilities or if they have mess facilities, naturally, as a GI, they always gripe and they don't think they are the best.

The club did a real landslide lunch business from about two or three signal outfits that were up the street

and they commented on how lucky the guys were that they could come to a club and have good lunch and good chow and have a menu to pick from.

Q. When the club opened was a membership campaign on behalf of the national organization, Veterans of Foreign Wars, put on in order to get members who would use the club or [21] post?

MR. SCHANTZ: I object again, Your Honor. I think the question is leading.

THE COURT: Don't lead the witness. Furthermore, I don't know what the importance of it is.

MR. MAGEE: I think it is important, Your Honor, because it shows one of the purposes for which a post is organized for the benefit of the national organization.

BY MR. MAGEE:

Q. What occurred on the original opening of the club? Were members sought or what occurred? A. The VFW Post 8316 the first few days it was open got 800-some-odd members, I believe. They had to get them away from the door because they had to get their membership cards.

Q. What distribution of these membership cards is made between the post and the national organization? A. Well, the national organization sends these cards down to the post and the post sells them to the members and of the \$5 that is charged for a member, \$2 and change goes back to the national headquarters and the rest remains with the post. Of the life members, which \$100 or \$105 I think it costs, that goes back to national headquarters.

[22] Q. Now, are there any other functions which the club or the post carries on for the National Headquarters in Viet Nam, Mr. Renieri? A. Any other functions?

Q. Yes, sir. Fund raising functions of any kind. A. Yes. There was a Poppy Day at which poppies are sent from National Headquarters to various posts, and these are sold, actually not sold, but they are soliciting and people contribute a dollar, fifty cents, two dollars or five dollars,

what have you. And on Poppy Day we had General Westmoreland who was Commander in Chief of Viet Nam who had lunch at the VFW, and he was the first one to buy a poppy. He was pretty well publicized that the Commanding General had lunch on Poppy Day.

Q. And the proceeds of the poppy sales are then sent where? A. Sent back to National.

Q. Now, what are the advantages of having a post open, for example, in the war zone like Viet Nam? A. Well, first of all, there are a lot of veterans there, they are working with civilian organizations, RMK, PME and various contract organizations, and then the GI's themselves as I explained before would have some place to go in the afternoon or evening or have lunch, so it served quite a few people.

Q. And these involved membership privileges? A. Oh, yes, only members could come into a veterans [23] club, a VFW club.

Q. Now, in connection with the goods and services which were performed, you were at the club how often? A. Two, three, four times a month.

Q. And were all of the articles and all of the services which are set forth on the exhibits which have been produced to Your Honor actually furnished by your corporation to the post? A. Yes. I personally saw to most of that equipment going in. In other words, when it was placed, we saw that it was placed and that it was functioning.

Q. Now, did the Veterans of Foreign Wars obtain what we call APO privileges for the post?

MR. SCHANTZ: Your Honor, are we talking about the national organization or are we talking about the post? I think this ought to be made clear for the record.

THE COURT: Which are you talking about?

BY MR. MAGEE:

Q. Do you understand the question, Mr. Renieri?
A. Would you repeat it again?

Q. Do you know how APO privileges are obtained for a post in Viet Nam, where the source of this is and where they obtain it?

MR. SCHANTZ: I object, Your Honor. These questions are general. Unless we are speaking about this particular [24] post, I don't see where it is relevant.

THE COURT: Does this club have an APO number, and if so, how did it get it, if this witness knows of his own personal knowledge.

THE WITNESS: I know the first club did have an APO number.

THE COURT: Do you know how they got it?

THE WITNESS: No, sir.

THE COURT: All right.

BY MR. MAGEE:

Q. But you did know they did have one? A. I wouldn't be able to sell it to them if they didn't have an APO number.

Q. By APO, this means the goods come through what source? A. When I sign APO 296430, whatever, when the goods come through the port at Saigon, this automatically means that they have military status and it is duty free. Consequently, the goods come into the country, into Viet Nam, duty free.

Q. And then they go into bond. Who picked the goods up after they came to the bond operation at the docks and delivered them to the post? A. The military. The military had to request this stuff, whatever came in with the consent of the GVN, Government of Viet Nam, and delivered it to the post.

Q. And you were there yourself when these deliveries [25] were made? A. On many occasions, yes.

Q. And in your position were you able to state that these goods were actually brought in duty free and used at the post for the benefit of the post? A. Yes, sir. They were brought in duty free and used on the post.

Q. When there was to be any meetings of the Veterans of Foreign Wars in the war zone, where did these meetings occur? A. The meetings occurred at the same place, at Post 8316, right there at the same building. There's only one building.

Q. Did you also engage in any social activities for the entertainment of our troops at this post? A. Right after the meeting all you did was turn around and sit at the table you were at and have a beer.

Q. Now, did there come a time or times when other representatives of the National Headquarters of the Veterans of Foreign Wars came to the post operation in Viet Nam? A. Yes, a Mr. Moore I think it is and Devore, and Mr. Frye.

Q. Who are these people? A. Mr. Frye is the Commander in Chief, at that time, of VFW, and I think Mr. Moore was the Assistant Commander in Chief. I am not sure.

[26] Q. And now, what did these people do and see when they came to the post operation in Viet Nam? A. Well, they came the same as Mr. Surer did, they commented and complimented on the activities that were taking place and the way the post had grown in such a short span of time and the way it was servicing the troops and the people who were there, the veterans. They were very happy with the operation as it stood at that time.

Q. Now, prior to the-strike that question.

Did there come a time when you discussed with any representative of the Veterans of Foreign Wars the payment of the bills which had been incurred in connection with your company delivering equipment and services to the post? A. Yes.

Q. In Viet Nam. Tell His Honor what occurred in regard to this. A. I spoke to Mr. Stein and Mr. Phillips.

Q. Who is Mr. Stein? A. He was the manager of the VFW at that time, VFW club.

Q. Is that Abraham H. Stein? A. Yes. Abe Stein. And Commander Phillips. I think we billed them sometime

in May, the latter part of May in '66, and the billing went through up until about June, so we didn't have to actually collect any money until about the tenth of August and about that time the tenth or twentieth of August, [27] sometime in the middle of August, I asked about the payment and they explained that they had been short and they were getting things rolling and that the payment would be forthcoming, just give them a few more weeks, and they would get a check off in the mail.

Then when the second pay period came around, in other words the second month of business came around, I had approached them again, which was like about the middle of September, maybe the end of September, and I asked them what the score was and they told me they had put two checks in the mail, one for \$4,000 and one for \$2,000. I couldn't call them a liar.

So this appeased me. I went back amongst my other business and waited for these checks to clear and be entered to our accounts, which they never were. We found out later they made no payment at all.

THE COURT: Well, you were a trustee of this organization. Did you know anything about their financial condition?

THE WITNESS: Supposedly, sir. They were supposed to be on good financial ground except that they owed a lot of money. They were supposed to have money coming in.

THE COURT: I don't know what they were supposed to. You were a trustee, one of the people running the club. Now, what did you know about the finances?

THE WITNESS: I wasn't running the club. We were supposed to oversee. You have to understand, Abe Stein and [28] Commander Phillips were strong people. They insisted everything was on the up and up.

THE COURT: You believe that?

THE WITNESS: I went along with it. I had an investment, and if you make anybody angry, you lose part of your investment.

THE COURT: All right.

BY MR. MAGEE:

Q. Now, I ask you the question, prior to October of 1966, had the bills which you had submitted to the post of the Veterans of Foreign Wars of the United States and Saigon been paid? A. No, sir.

Q. Now, did there come a time when the club was closed down? A. Yes. There was a notice put out saying that Post 8316 was going to be abolished or closed down, they were revoking their charter. This notice came from National Headquarters by mail to various members.

MR. MAGEE: May this be marked as our next exhibit, Your Honor?

THE COURT: It may.

THE DEPUTY CLERK: Plaintiff's Exhibit No. 5, for identification.

(Document marked Plaintiff's Exhibit No. 5 for identification.)

[29] BY MR. MAGEE:

Q. I show you Plaintiff's Exhibit No. 5, for identification, and ask you if this is the notice which was received from the National Headquarters in regard to the operations of this and other clubs in Viet Nam? A. Yes, this is the notice we saw.

Q. Now, when the club closed down pursuant to this notice, was your equipment, the piano and all these other articles you had furnished, left in the custody and control of the club? A. Yes.

Q. Physically? A. Everything was, as far as I know, in the club.

Q. And, of course, you were no longer in any capacity in the club because the charter had been cancelled as of October, 1966, pursuant to this notice? A. Well, yes.

Q. Plaintiff's Exhibit 5? A. Yes. We couldn't do anything anyway, the place was closed down and padlocked.

Q. And who took over according to this notice the management and control of all the business and operations of the club?

MR. SCHANTZ: Well, I object, Your Honor. I think the notice speaks for itself.

THE COURT: Let me see the notice.

[30] MR. SCHANTZ: Unless this witness has personal knowledge.

MR. MAGEE: I can read it.

THE COURT: I can read it myself.

MR. MAGEE: I offer this in evidence.

THE COURT: Any objection?

MR. SCHANTZ: No objection.

THE COURT: Admitted.

(Thereupon, Plaintiff's Exhibit No. 5, was marked in evidence.)

THE COURT: All right.

BY MR. MAGEE:

Q. And did the management or whoever took over this club pursuant to the notice which His Honor has just read ever return to you any of the goods, wares, or merchandise which had been delivered to their post in Viet Nam?

A. No, sir, we didn't get anything back.

Q. And has anything since this notice was issued ever been paid on account of the claims which have been filed before the Court? A. No, sir, nothing has been paid.

THE COURT: I may say in this case, although you think to the contrary, I saw no evidence so far that the National Headquarters of the VFW took over the personal property in this matter.

[31] BY MR. MAGEE:

Q. Were representatives of the National Headquarters in Viet Nam after November, October of 1966? A. Were there representatives from National?

Q. Yes. A. Yes, there was a Mr. Radco who came from National Headquarters.

Q. And this was after the notice had been issued cancelling the club operations? A. I don't think so.

Q. For example, according to the notice, the club was cancelled as of October, 1966? A. He was there about that time, yes.

Q. And— A. Maybe a little later.

Q. In regard to the operations of the club, who took over their operations after that? I assume the commander had been relieved of his duties. Who took over the facilities?

A. I don't know who took them over, but according to the notice the National Headquarters took over all the business.

THE COURT: He doesn't know. That is the answer.

THE WITNESS: I don't know.

BY MR. MAGEE:

Q. Now, did you have any discussions in regard to these bills or how they would be paid by any representative in the [32] National Headquarters? A. I spoke to Mr. Radco in reference to the bills. I wanted to know what would be done to pay them. He asked me if I would be interested in—

MR. SCHANTZ: Again I object, Your Honor.

THE COURT: Who is Mr. Radco?

THE WITNESS: He was a representative from the National Headquarters that came to Saigon to look into the matters of discretion or mal-practices that they said were going on.

THE COURT: Do you know what his position was?

THE WITNESS: No. All I know, he is a retired policeman.

THE COURT: All right.

THE WITNESS: And he asked if I would be interested or my company would be interested in financing another VFW club in order to get these bills paid from the monies from the new VFW club we could get monies paid on the old bills from the old VFW club. And I told him I would have to talk to my manager and my people, but nothing

ever came of it because they just didn't have a VFW club, it just lost all steam.

MR. MAGEE: There has been produced on discovery the next exhibit showing income derived, may it please the Court, from dues, persons who join these various clubs.

THE COURT: All right.

[33] THE DEPUTY CLERK: Plaintiff's Exhibit No. 6, for identification.

[Document marked Plaintiff's Exhibit No. 6, for identification.]

MR. MAGEE: Counsel produced that pursuant to our request.

THE COURT: All right.

Anything else?

MR. MAGEE: Not at the moment.

MR. SCHANTZ: Your Honor, for the record, I would object. I don't see the relevancy of this.

THE COURT: Admitted.

[Plaintiff's Exhibit No. 6, previously marked for identification, was received in evidence.]

MR. MAGRE: I call Your Honor's attention to the dues which are paid from sources generated by these clubs, total, as I read it, Your Honor, \$1,257,048.22 a year.

Your Honor, we have another case which is pending in the General Sessions Court, and counsel have agreed that on the issue of liability that that case will be controlled by whatever Your Honor rules in this case.

THE COURT: All right.

MR. MAGEE: I would just like to have this witness identify the amounts which are involved for Price and Company, [34] Limited, in order that we won't have to call him back.

THE COURT: I don't know what is involved here yet. You have got a lot of charges here, wasn't anything ever paid on any of them?

MR. MAGEE: No, sir.

THE COURT: Not a dime?

MR. MAGEE: Not one dime. In addition to that, we have over \$13,000 more in liquor and whiskey and other services which were furnished to the club through another company which he represented at the time, Price and Company, Limited, and that is over in the General Sessions Court, and nothing has been paid on that either.

THE COURT: And the total of these bills is what?

MR. MAGEE: That's stated in the complaint, Your Honor. I will read it into the record. \$39,928.38, with interest thereon since the time of delivery, at six percent per annum.

THE COURT: All right.

MR. MAGEE: And we have involved—so we won't have to call the witness back to identify them, I would like to have these two exhibits marked, so we can offer them again later if Your Honor should rule in favor of liability.

THE DEPUTY CLERK: Plaintiff's Exhibits 7 and 8, for identification.

[35] [Thereupon, documents were marked Plaintiff's Exhibits 7 and 8, for identification.]

BY MR. MAGEE:

Q. I show you two exhibits just for identification and use later, Plaintiff's Exhibit No. 7 and 8. Can you advise the Court as to whether the materials and goods referred to in these exhibits were delivered to the club on behalf of Price and Company, Limited, whom you represented? And give the Court the total amount.

THE COURT: If this involves a case in the Court of General Sessions, nothing I do over here will affect it except by you all's stipulation as to liability. I can't decide the damages over there.

MR. MAGEE: I want these identified by the witness under oath with the hope counsel will not require him to come back in that case, that's all.

MR. SCHANTZ: Your Honor, my sole stipulation in the General Sessions case was with respect to liability. There are things included in that list that are not even in the Gen-

eral Sessions case, but I think will be the subject of an attempted amendment, the statute of limitations having run.

MR. MAGEE: That's true.

THE COURT: I can't consider these. So let's go to something else.

[36] BY MR. MAGEE:

Q. I just ask you the question, in extending the credits which you have described on behalf of Sarl Electronics, Limited to the post of the Veterans of Foreign Wars of the United States, to whom did you extend this credit? A. To the VFW Post 8316.

THE COURT: VFW what?

THE WITNESS: 8316, Your Honor.

MR. MAGEE: Your Honor, I would like to ask the Court to judicially notice Chapter 36, Section 111 of the United States Code, chartering the Veterans of Foreign Wars of the United States.

THE COURT: Let's get rid of this witness, then you can take care of those matters.

MR. MAGEE: I have no further questions of the witness.

THE COURT: Do you have any questions?

CROSS EXAMINATION

BY MR. SCHANTZ:

Q. Are you a member of the Veterans of Foreign Wars?

A. Yes, I am a life member.

Q. Now, you are also a salesman for Sarl Electronics, the plaintiff in this case; is that right? A. Yes, I was, sir.

Q. And you have identified various invoices here, pages 1 through 10 on Plaintiff's Exhibit No. 2. Now, you have also [37] indicated that there was certain pay-offs on amusement machines to which Sarl was entitled to fifty percent; is that correct? A. I don't follow—certain pay-offs?

Q. Well, Sarl's arrangement with the club was that they would obtain fifty percent? A. Of the net.

Q. Of the net pay-off; is that correct? A. Yes, sir.

Q. On the machine.

And you read a figure of \$16,562 that Sarl claims is their share of the net pay-off; is that correct? A. No. \$22,000, sir.

Q. Well, that includes pinball and juke box? A. That includes all machines.

Q. I am referring now just to the slot machines. A. Yes.

Q. Where did you get the figures for those records? A. Right here, sir.

Q. Which of these are pinball and which of these are slot machines? How do you tell? A. Do you want me to point them out?

Q. How can you tell? A. Well, these are the names of various slot machines, and if you came down to this, this would be a Follix Bridger, this would be Progressive. You have to know the code.

[38] Q. How many slot machines were in this club? A. The VFW?

Q. Yes. A. At various times we had several, we had up to and including twenty, ten, twelve, fourteen, eighteen, twenty.

THE COURT: That equipment was just leased, wasn't it?

THE WITNESS: Yes, sir.

THE COURT: Was that in this \$39,000?

MR. MAGEE: Yes, sir. We never even got the equipment back. This is the leases on them they never paid.

THE COURT: Well, you better separate it.

MR. MAGEE: No, sir. We are not charging anything except for the rentals which were due on it, Your Honor.

THE WITNESS: It is separated, sir.

THE COURT: You are not charging them for the machines?

MR. MAGEE: No, sir. They are still there.

THE COURT: I don't care whether they are there or not. They still belong to you.

What did you charge in this \$3,928 concerning the rented machines?

THE WITNESS: Well, sir, the \$22,352 is from the concession service and rental of the pinball and slot and amusement machines. The \$17,000 is from equipment actually sold, such as a piano, records, slugs, chip books, dining chairs.

[39] THE COURT: The \$22,000 represents half of the net proceeds which you should have gotten but didn't?

THE WITNESS: Right, sir.

THE COURT: How did you reach that figure?

THE WITNESS: Well, every time we go in we make a collection report. This collection report is made by one of our collectors with the representative from the VFW club. He signs the copies. It comes in five copies and he takes the top copy, the original. All the slugs are counted and the jackpots are deducted from a meter reading on the back of the machine. They are counted money-wise.

Let's say a machine has \$100 less \$10 in pay-outs. It would be \$90, and cut it in half, \$45 a piece. But the club takes all the slugs back and at the end of the month we invoice the club from the collection report as you see here. sir, if we have all the collection report numbers, the dates they were taken on the machine with serial number and amount.

We invoice them at the end of the month and the club is supposed to mail out a check. This is how we arrived at the figures.

BY MR. SCHANTZ:

Q. Where are the records from which you made that list of invoices of the signed collector's slips? A. The signed collection reports?

Q. Yes. [40] A. I imagine we have our copy. The club had their copy also.

Q. And these would have been signed by Phillips or someone else there at the club? A. Yes, sir.

Q. Now, I believe you mentioned that Phillips was elected by the members of the club to be Post Commander; is that right? A. I didn't say that, sir.

Q. Is that true? A. Was Phillips elected?

Q. Yes. By the members of the club, as far as you know. A. He had a charter. Yes, I think he was elected by the general membership.

Q. Now, was it your idea that you be placed on the board of trustees of the VFW Post No. 8316? A. Yes. Not

my idea, but it was discussed, and I discussed it with Commander Phillips in that I would like to see what was going on, or I thought I would like to see what was going on.

THE COURT: When did you become a trustee?

THE WITNESS: Right there, not in the beginning, but the month after the club was opened, sir. The next general meeting.

THE COURT: You said Phillips first approached you for a line of credit in January-February?

[41] THE WITNESS: About then, sir, yes.

THE COURT: All right. In relation to that, when were you appointed trustee?

THE WITNESS: The end of May or June, sir, about that time.

THE COURT: When did it open?

THE WITNESS: I think the club opened the end of April. I am not very sure, sir, it's several years ago.

THE COURT: What is the first invoice of some shipment to the club? It's May, isn't it?

THE WITNESS: Up here, yes, it has May 26, sir, 1966.

THE COURT: That would have been before it opened;

THE WITNESS: No, no. The machines had to be in the club, it couldn't have been before it opened. That was about when—this 5/26/66 has to be a collection date, so that means the machines were operating maybe a week or ten days, and the club was opened a month before that.

THE COURT: All right. Then it must have opened about April?

THE WITNESS: About April, sir.

BY MR. SCHANTZ:

Q. And you wanted to be a member of the board of trustees, is that right, to oversee this operation; A. Not to oversee it—well, you could say that, true.

Q. You were there protecting your investment, weren't you? [42] A. Supposedly, yes.

Q. Now, the selling of poppies was strictly a group activity of the local post, wasn't it? A. The way I understood it, sir, poppies originated from the National Headquarters.

Q. Yes, I understand that. But they were sold by the individual members of the post? A. Yes. We had—oh, I think twenty people elected to sell poppies.

Q. And Sarl Electronics had nothing directly to do with the sale of these poppies, did they? A. I hope not, sir.

Q. Now, do you know as a matter of fact that all of the money for the sale of the poppies went back to the National or could in fact some of that money gone back?

THE COURT: Mr. Schantz, I couldn't care less.

MR. SCHANTZ: All right. Thank you.

BY MR. SCHANTZ:

Q. Now, when the club fell behind in the payments on this equipment and on this machine collections you approached Mr. Stein who was the club manager; is that is that right? A. And Mr. Phillips.

Q. Who was Commander of Post 8316; is that correct? A. Yes, sir.

Q. And you asked them where your money was, right? [43] A. Yes, sir.

Q. And this was after you had billed them? A. Yes. I say, this was about June, the end of June, beginning of July.

MR. SCHANTZ: I have no further questions.

THE COURT: Anything further, Mr. Magee?

MR. MAGEE: Just a moment, Your Honor.

[Brief pause.]

MR. MAGEE: I have no redirect, Your Honor.

THE COURT: Now, you may step down. Thank you.

THE WITNESS: Thank you very much.

[Witness left stand and resumed his seat at the counsel table.]

THE COURT: Have you any other testimony?

MR. MAGEE: No, Your Honor.

I want you, Your Honor, to take judicial notice of the statute incorporating the defendant corporation.

THE COURT: Which I will do.

MR. MAGEE: Which I read to Your Honor, which is 36 USCA Sections 111 through 120.

THE COURT: All right.

MR. MAGEE: And that subject to argument, Your Honor, is our case.

THE COURT: Do you want to offer anything?

MR. SCHANTZ: Your Honor, at this time I would like [44] to make a motion.

THE COURT: All right.

MR. SCHANTZ: On behalf of the Defendant Veterans of Foreign Wars, on the failure of the plaintiff to present a prima facie case showing any legal liability on the part of the defendant, I would move for judgment in favor of the defendant.

THE COURT: All right.

Mr. Magee, what have you got to say about that?

MR. MAGEE: May it please the Court: Our position on it is this: That the Veterans of Foreign Wars of the United States is a special corporation created by an Act of Congress. It was incorporated in 1936. It's given a title and it's given the right to adopt a constitution and by-laws and to complete the organization of the corporation and to elect officers.

Now, the purposes of this corporation as set out in 113 shall be fraternal, patriotic, historical and educational, to preserve and strengthen comradeship among its members to assist worthy members, to perpetuate the memory and history of the dead and assist their widows and orphans, to maintain true allegiance to the United States of America and to its Constitution and by-laws, to foster true patriotism, maintain and extend institutions of American freedom and preserve the United States from all her enemies whomsoever.

[45] Under 114 the powers are listed. It's given the right of perpetual succession with the right to sue and be sued in courts of equity, receive, hold on to, use, dispose of such real property, personal property, money, contracts, rights and privileges that shall be necessary and incidental for its corporate purposes.

To adopt a corporate seal and alter the same as its pleasure, adopt and apply the administration of the constitution and by-laws and regulations not inconsistent with the laws

of the United States. To adopt and have exclusive right to manage and use such emblems and badges as may be necessary—and here are the important parts, Your Honor.

To establish and maintain offices for the conduct of its business, to establish, regulate or discontinue subordinate state and territorial sub-divisions and local chapters or posts, to establish a magazine or other publication and generally to do any and all such acts and things as may be necessary and proper to carry into effect the purposes of the corporation.

Then the membership is no person shall be a member of this corporation unless he has served honorably as an officer, enlisted man in the Armed Forces of the United States, et cetera.

The corporation shall acquire certain other assets and it shall have the exclusive name to be used for every [46] Veterans of Foreign Wars of the United States'—and then they are allowed to amend their charter.

What the Veterans of Foreign Wars has done is to establish posts. Now, these are unincorporated posts which are created by the issuance of an authority from the National Headquarters which Your Honor has before you on the form which was the first exhibit, I believe, we put in evidence.

They do not have chapters in the sense that they are incorporated under state laws, these are arms and offices, what they are, or posts of the national association. And what do these posts do?

These posts, as we know from the testimony, they go out and establish a facility, a facility particularly in areas where members of the Armed Forces are to support the morale, as we call it, of the troops.

Your Honor and I have been in these situations in the world. We have both been to Europe, we know how these operate. The PX system, the Veterans of Foreign Wars Posts are set up to serve the military, and—

THE COURT: There is a heck of a difference between a PX and the Veterans of Foreign Wars.

MR. MAGEE: I understand that, Your Honor. But I am going to get into the tax angle of it.

THE COURT: The tax angle?

MR. MAGEE: Only to show this is a complete tax-free [47] operation for the morale of the troops.

THE COURT: Oh, look, the VFW was formed after World War I, it didn't have anything to do with the morale of the troops or anything else.

MR. MAGEE: Of course, we are in another war, Your Honor.

THE COURT: Yes, and the number of posts and members of VFW in a war zone, semi-war zone or quasi-war zone is infinitesimal as compared to the whole membership, I suspect.

MR. MAGEE: This is true, Your Honor.

The point I make, this is an office, a facility, a post.

THE COURT: It's a post.

MR. MAGEE: Representing the Veterans of Foreign Wars. They are given a charter and these posts are authorized to set up and recruit members, which they do, they take on the sales campaigns, they remit this monies back to the National Headquarters.

THE COURT: Which they spend for charitable purposes.

MR. MAGEE: According to the courts, they spend it for fraternal reasons, Your Honor. The only three cases I know involving this situation, for example, Emit Hirsch Post 596 which was attempting not to pay taxes in the State of New York as the representative of the Veterans of Foreign Wars [48] there on the theory that it was engaged in what Your Honor said, charitable purposes, and this is reported in 106 New York Supplement 2d, 596.

THE COURT: I was talking of the proceeds of the poppies.

MR. MAGEE: This is not proceeds of the poppies.

THE COURT: That is what you mentioned though.

MR. MAGEE: I mentioned that the things that are done, the proceeds of the poppies which is quite a campaign, as Your Honor knows, go back to the National organization,

so does a share of all the membership dues and I don't think, Your Honor, we can take it that this little local post didn't have as many members as all the other posts combined. This is the way this corporation functions. It gets a member only when it has a post somewhere to which they can go and to exercise the pleasures and privileges of the post facility they join and they get a card and two out of five dollars of that card admission goes to the National Headquarters. This is the way they function. This is their post.

It's not an independent operation, Your Honor, and this is what the court held, I submit, in the *in re Emil Hirsch Post* in New York, because there they employed people in the post, and they wanted to not pay taxes on their incomes and things of that sort on the theory, as Your Honor indicated, [49] they were a charitable organization. The court held—this goes way beyond charity, this is a fraternal organization set up for the benefit of its members, and they said this: That the respondent in that case who was acting for them in New York City is an unincorporated association, being a local post of the Veterans of Foreign Wars of the United States with more than 500 members. The national organization authorized to establish local posts of which the respondent is one, was incorporated by an Act of Congress in 1936, 36 USCA 111-20, the purpose of the national corporation is therein stated.

Then it lists these purposes which I have already read to Your Honor from the Act. Then the court goes on, the respondent is not incorporated and as a local post of the national its purposes are dependent upon the powers of the parent corporation to ascertain these purposes. Of course, we must go to the Act by which it was incorporated and to that only so the sole source of power and authority, according to the New York Court of this corporation, this branch, is as a functionary of the national corporation, and you go to the national Act and the national Act, of course, when it gives these posts they have the right on behalf of the national to acquire property, they have all these rights because they are an office, they are a post.

MR. MAGEE: I understand that, Your Honor. But I am going to get into the tax angle of it.

THE COURT: The tax angle?

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It's only to the national Act that you look for [50] their authority. Your Honor can see all they do is give them a charter to operate as a post of the Veterans of Foreign Wars, they are not incorporated. Your Honor asked this question earlier. You can set up a situation where they have independent charters where as your Honor remembers, we went through this in the AIA case. There the AIA had a chartered corporation in the State of New York. You referred that case to New York, but there they don't operate this way. This is just as if they had an office doing business, it's their soliciting members, collecting funds and it's there for these patriotic purposes of supporting the troops and this is its authority, the Act of Congress, and that trickles down to the post.

So when a person knowing this, knowing the law, deals with the post, they are dealing under this decision with the national corporation and you look to the powers of the parent corporation as the court says, to determine the powers of the post.

THE COURT: Mr. Renieri never did that.

MR. MAGEE: Well, certainly they had dealt with this organization, Your Honor, as a representative of the national they had good relations, they had been paid, they were not giving it to individuals, they were giving it knowing this post represented the Veterans of Foreign Wars over the years.

THE COURT: Mr. Renieri became a trustee of the post [51] in order to watch out for his investment, he didn't try to get on the national board.

MR. MAGEE: No, of course the national board through the post asked for financial assistance. As I look at it, Your Honor, to ask for financing, this was given to them. All the goods and services were rendered, the machines were put in, they were brought through, cleared through the U.S. Government, they had an APO designation which meant they came in tax free, and all of this is innured to the benefit of the Veterans of Foreign Wars, and we end up without being paid any of the rents, any of the goods, all the things sold in the post had been consumed there by members of

the Veterans of Foreign Wars. This is their organization. And on top of it, I submit, the letter which I submitted to Your Honor makes it very clear who controls and runs this post.

When they closed it they said we are going to cancel your charter, Plaintiff's Exhibit 5, and then they list the posts in Viet Nam, including 8,316 in Saigon by direction of the commander in chief, Leslie M. Frye, all members in good standing of these posts have been transferred to the Republic of South Viet Nam post—

THE COURT: I read that, Mr. Magee.

MR. MAGEE: The next one is the business and affairs of this post as of October 1960—will be administered from [52] the national headquarters, it will hold no meetings, members will continue to receive VFW magazines, they will be entitled to full rights and membership. If this isn't closing down its office which it authorized to be opened and taking over its operations, I don't think it could be clearer. All members transferred to other posts and told they can have their facilities in the U.S. when they come here and still get their magazine, with the balance of the three dollars, I suppose, that is involved in this.

So this is an operation directed by the national headquarters. They opened it, they direct how it shall be run, they send inspectors out, they commended them and even offered our people to try to set up another post when they closed this one down in order that we get our money back. This is from the national headquarters. And then they direct that the business and affairs of this post—how can they do this if they don't control it, Your Honor? This is their order coming from the Quartermaster General.

THE COURT: They have a certain control over it just like national fraternities have control over local chapters and like labor unions have control over locals, but they don't authorize every local and every fraternity chapter and what not to pledge the credit of the parent corporation or parent organization if unincorporated.

[53] MR. MAGEE: Your Honor, I read this differently when the courts say you go back and the powers of the post are the same as the powers of the national organization. All these powers are vested in the post. They are doing business on this basis. For example, in the State of New York—and this is the basis upon which they held them liable to pay Social Security and withholding taxes.

THE COURT: Who did they hold, the local, not the parent?

MR. MAGEE: True, Your Honor.

THE COURT: If you want to sue Post No. 8316 and get service, I would give you judgment fast.

MR. MAGEE: That is an unincorporated office. Your Honor knows I can't sue them. Just as if we opened an office of any corporation in New York City and we respectfully submit, Your Honor, this is a national organization, it's authorized to open a post, it opened the post, it conducted its business affairs through that post, it got membership dues, made sales, and we respectfully submit that we are entitled to be paid for the credits and things that we gave, and I submit it is on the basis and credit of the national organization. These little posts have nothing, Your Honor, when they start out. We put in not only the rentals but equipped the whole club and I respectfully submit, Your Honor, in equity and justice, they don't dispute these amounts, as I understand it.

[54] THE COURT: Mr. Magee, they gambled and they lost.

MR. MAGEE: No, sir, I don't agree with that, Your Honor. This I think is a business arrangement.

THE COURT: Let me see the other exhibits.

Anything else, Mr. Magee?

MR. MAGEE: That is our position, and we say the motion should not be granted, Your Honor. I would like to brief it a little further if Your Honor does not agree. These are the only three cases I have found. If Your Honor has some question as to whether we haven't established as a matter of law that we are entitled to recover—

THE COURT: Mr. Magee, I don't have the slightest question.

Do you want to say anything, Mr. Schantz?

MR. SCHANTZ: Nothing further, Your Honor.

THE COURT: Mr. Magee, on the motion we interpret the evidence most favorably to the plaintiff and give the plaintiff the benefit of all reasonable inferences to be drawn therefrom. When we so interpret the evidence, we find the following:

Apparently sometime before January or February of 1966—how long before, we do not know—the national corporation of the VFW granted a charter to Post 8316 in Saigon. One Charles Phillips was elected the Commander of the [55] VFW Post. This Charles Phillips approached Mr. Anthony Renieri, who was a salesman for the plaintiff, and who had considerable experience in dealing with VFW posts, more like in Okinawa.

Mr. Phillips asked for a line of credit for Post 8316. Mr. Renieri said he didn't know whether or not they could grant the line of credit or not, he would have to go further up, and he went further up and they said that they would give the credit and as Mr. Renieri quite frankly stated, they gave the credit to Post 8316.

At no time did Charles Phillips, as far as the evidence is concerned, ever have the slightest authority to bind the national organization for any purchase or in any way thereafter.

Apparently certain equipment was sold to the club on credit, and certain equipment was leased to them, gambling and other equipment, of which they were to get a fifty-fifty cut of the net, and Mr. Renieri was made a member of the board of trustees of Post 8316 to, in his words, watch over his investment. In what? Equipment sold to Post 8316.

There are not here too many purchase orders, but you have submitted a few. I notice one, 23 February 1966, for a Frigidaire, and it is signed for to be sent to Post 8316, not VFW. There are other purchase orders to the same effect.

There is not the slightest question that the credit [56] was granted to the Post, and that at no time did the national organization ever permit its credit to be pledged, that no one ever pledged its credit who had authority or didn't have authority purported to pledge its credit.

The plaintiff itself at no time relied, as far as the evidence goes, on the credit of the national organization, but according to Mr. Renieri, he stated quite frankly they relied on the credit of the local Post 8316.

Under that circumstance, the Court holds there is no liability on the national organization and will grant the motion for judgment for the defendant.

Present an order.

MR. SCHANTZ: Yes, I will present an order, Your Honor.

THE COURT: Thank you, gentlemen.

THE DEPUTY MARSHAL: This Honorable Court stands adjourned until 10:00 a.m. tomorrow morning.

PLAINTIFF'S EXHIBIT 1



By the Authority of the Veterans of Foreign Wars of the United States:

We it Known, that Comrades

having served honorably in the Army, Navy, Marine Corps, or Air Force of the United States of America in foreign wars of the United States of America, are hereby authorized to organize and are constituted a Post in the City of _____ in the State of _____ to be known as _____

Post No. _____, Veterans of Foreign Wars of the United States.

In Witness Whereof, we have hereto set our hands and the official seal of the association this _____ day of _____ 19____

Adjutant General

Commander in Chief

PLAINTIFF'S EXHIBIT 2

STATEMENT

SARL ELECTRONICS

ROOM 606
GLOUCESTER BLDG
HONG KONG

PLEASE MAIL YOUR CHECKS
TO THE BANK - NOT TO OUR
HONGKONG OFFICE.

Hq. Veteran Foreign War
87, Chi Lang, Vietnam
APO 96245, U.S. Forces
Gia Dinh Vietnam.

HONGKONG 14th October 1966

DATE	INVOICE NO.	DESCRIPTION	AMOUNT US \$
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~~ALL PAYMENTS TO BE MADE BY BANK OF AMERICA~~

List of the outstanding C/R from the beginning up to date 14th Oct. 1966

5/26/66	C/R # 10926	On Take # 740521	38.13
5/5/66	C/R # 10410	PS # 705	31.90
5/5/66	C/R # 10411	SS # A-2301	(32.18)
5/5/66	C/R # 10412	PS # 740521	32.70
5/5/66	C/R # 10413	PS # 742220	1.58
5/5/66	C/R # 10414	PS # 742260	87.47
5/5/66	C/R # 10415	PS # 742161	10.50
5/5/66	C/R # 10416	PS # 742076	12.50
5/5/66	C/R # 10417	PS # 740587	54.30
5/5/66	C/R # 10418	PS # 742111	34.20
5/5/66	C/R # 10419	PS # 741031	14.25
5/5/66	C/R # 10420	PS # 742136	13.37
5/5/66	C/R # 10421	PS # 742137	52.20
5/5/66	C/R # 10422	PS # 305570	46.77
5/26/66	C/R # 10946	PS # 742161	(7.75)
5/26/66	C/R # 10940	PS # 742161	22.40
5/26/66	C/R # 10941	PS # 740587	39.30
5/26/66	C/R # 10942	PS # 742161	47.05
5/26/66	C/R # 10943	PS # 741031	100.10
5/26/66	C/R # 10944	PS # 740137	21.00
5/26/66	C/R # 10945	PS # 742111	10.88
5/26/66	C/R # 10921	PS # 1154	60.60
5/26/66	C/R # 10922	PS # 705	67.10
5/26/66	C/R # 10923	PS # 741305	13.30
5/26/66	C/R # 10924	PS # 742260	57.20
5/26/66	C/R # 10925	PS # 740521	41.93
6/16/66	C/R # 11364	PS # 740521	37.25
6/16/66	C/R # 11365	PS # 741305	51.57
6/16/66	C/R # 11366	PS # 742260	19.75
6/16/66	C/R # 11367	PS # 742220	70.43
6/16/66	C/R # 4303	PS # 742161	27.05

(Continued)

— Payment in settlement may only be made by depositing the amount to the account of : SARL ELECTRONICS with Bank of America. Westwood Branch 1099 Westwood Boulevard, Los Angeles 24, California, U.S.A. and forwarding to us a copy of deposit letter.

App. 49

STATEMENT

SARL ELECTRONICS

ROOM 606
GLOUCESTER BLDG
HONG KONG

PLEASE MAIL YOUR CHECKS
TO THE BANK - NOT TO OUR
HONGKONG OFFICE.

Page -2-

Hq. Vietnam Foreign War
37, Chu Han, Vietnam
APO 924-1, H.H. Order
Vietnam, Vietnam.

HONGKONG 14th October 1966

DATE	INVOICE NO.	DESCRIPTION	AMOUNT US \$
BALANCE BROUGHT FORWARD			
6/15/66	C/R # 11369	On Invoice # 742194	35.70
6/15/66	C/R # 11370	" " " 742194	31.20
6/15/66	C/R # 11371	" " " 742111	31.70
6/15/66	C/R # 11361	" " " 305370	35.27
6/15/66	C/R # 11362	" " " 705	25.7
6/15/66	C/R # 11363	" " " 11-4	37.2
6/15/66	C/R # 11373	" " " 741051	120.75
6/15/66	C/R # 11374	" " " 742135	112.75
6/15/66	C/R # 11375	" " " 742137	72.50
6/23/66	C/R # 11395	" " " 705	30.70
6/22/66	C/R # 113-6	" " " 11-4	66.43
5/31/66	C/R # 1-53	" " " 705	21.95
6/1/66	C/R # 10554	" " " 705	1.65
5/31/66	C/R # 10555	" " " 11-4	74.20
6/1/66	C/R # 1-56	" " " 11-4	17.0
6/1/66	C/R # 1-57	" " " 7-13-5	21.00
6/1/66	C/R # 10558	" " " 742260	147.45
6/1/66	C/R # 10559	" " " 742220	60.15
6/1/66	C/R # 10560	" " " 740521	48.15
6/1/66	C/R # 10561	" " " 305370	57.45
6/4/66	C/R # 10978	" " " 11-4	21.50
6/4/66	C/R # 10979	" " " 705	40.7
6/4/66	C/R # 10980	" " " 742220	15.40
6/4/66	C/R # 10981	" " " 740521	26.20
6/4/66	C/R # 10982	" " " 741305	19.00
6/4/66	C/R # 10983	" " " 742260	172.93
6/9/66	C/R # 10999	" " " 305370	44.95
6/9/66	C/R # 11-00	" " " 705	21.75
6/9/66	C/R # 11301	" " " 11-4	69.3
6/9/66	C/R # 11303	" " " 740251	3.15
6/9/66	C/R # 11304	" " " 741305	37.10
6/9/66	C/R # 11305	" " " 742260	(70.5)
6/9/66	C/R # 11306	" " " 742220	11.10
6/9/66	C/R # 11307	" " " 742194	47.55

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Continued

App. 50

STATEMENT

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Page -3-

Hq. Veteran Foreign War
87, Chi Mang, Vietnam
APO 96243, U.S. Forces
Giardin, Vietnam.

HONGKONG 14th October 1966

DATE	INVOICE NO.	DESCRIPTION	AMOUNT US \$
XXXXXXXXXXXXXXXXXXXX			
6/9/66	C/R # 11306	On Take # BS # 7405.7	74.55
6/9/66	C/R # 11309	" SS # 742161	50.45
6/9/66	C/R # 11310	" DES# 741031	53.50
6/9/66	C/R # 11311	" BZ # 742136	135.88
6/9/66	C/R # 11312	" BZ # 742137	124.75
6/9/66	C/R # 11313	" D3S# 742111	8.32
6/9/66	C/R # 11347	" FR # 705	33.57
6/9/66	C/R # 11348	" SS # 1194	76.15
6/2/66	C/R # 14107	6 ea Payout Machines	
	thru 14112	Sarl share	235.00
6/23/66	C/R # 14139	1 ea JB & 13 ea Payout	
	thru 14152	machines Sarl share	905.46
7/2/66	C/R # 14163	FR # 705	38.82
7/2/66	C/R # 14164	SS # 1194	87.15
7/4/66	C/R # 14176	13 ea Payout machines	
	thru 14183	Sarl share	759.54
7/9/66	C/R # 14522	13 ea Payout machines	
	thru 14534	Sarl share	590.73
7/13/66	C/R # 14549	6 ea Payout machines	
	thru 14564	Sarl share	245.96
7/16/66	C/R # 14571	13 ea Payout machines	
	thru 14584	Sarl share	
	less 14580		838.51
8/23/66	C/R # 17463	# PS # 742260	51.40
8/23/66	C/R # 17464	# BZ # 742220	92.73
8/23/66	C/R # 17465	# D3S# 742111	43.33
8/23/66	C/R # 17486	# BZ # 742137	6.55
8/23/66	C/R # 17487	# D3S# 741031	32.75
8/23/66	C/R # 17488	# BZ # 742136	31.35
8/23/66	C/R # 17489	# D3S# 742194	32.85
8/23/66	C/R # 17490	# BZ # 742137	175.75
8/23/66	C/R # 17491	# PS # 740521	65.58
8/23/66	C/R # 17492	# D3S# 741100	12.75
8/23/66	C/R # 17493	# SS # 1194	82.18

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STATEMENT

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Page -5-

Hq. Veterans Foreign War.
87, Chi Lang Vietnam
APO 96242, U.S. Forces
Cia Dinh, Vietnam.

HONGKONG 14th October 1966

DATE	INVOICE NO	DESCRIPTION	AMOUNT US \$
XXXXXXXXXXXXXXXXXXXX			
8/6/66	C/R # 14876	% B # 742137	79.13
8/6/66	C/R # 14877	% BZ # 742126	15.13
8/11/66	C/R # 14893	% SS # 1104	62.65
8/10/66	C/R # 14894	% FB # 705	67.20
8/11/66	C/R # 14899	% BZ # 742161	53.00
8/11/66	C/R # 14900	% BZ # 742137	38.20
8/11/66	C/R # 17401	% B/S # 742144	105.40
8/11/66	C/R # 17402	% SS # 1104	17.30
8/11/66	C/R # 17403	% FB # 705	13.10
8/11/66	C/R # 17404	% BZ # 742220	48.95
8/11/66	C/R # 17405	% PS # 742260	46.18
8/11/66	C/R # 17406	% BZ # 742136	54.25
8/11/66	C/R # 17407	% BZ # 742521	19.60
7/30/66	C/R # 14803	% SS # 1104	51.10
7/30/66	C/R # 14804	% PS # 741305	10.55
7/30/66	C/R # 14805	% BZ # 742161	8.75
7/30/66	C/R # 14806	% BZ # 742260	66.65
7/30/66	C/R # 14807	% BZ # 742220	37.85
7/30/66	C/R # 14808	% BZ # 742111	7.13
7/30/66	C/R # 14809	% BZ # 742137	2.10
7/30/66	C/R # 14810	% BZ # 742136	70.75
7/30/66	C/R # 14811	% BZ # 742136	42.00
7/30/66	C/R # 14812	% BZ # 742137	7.00
7/30/66	C/R # 14813	% BZ # 742137	54.00
7/30/66	C/R # 14814	% BZ # 742521	26.50
8/2/66	C/R # 14831	% FB # 705	49.75
8/2/66	C/R # 14832	% BZ # 1104	55.30
8/2/66	C/R # 14833	% BZ # 742521	5.50
8/2/66	C/R # 14834	% BZ # 742137	9.05
8/2/66	C/R # 14835	% BZ # 742144	26.30
8/2/66	C/R # 14836	% BZ # 742136	40.00
8/2/66	C/R # 14837	% BZ # 742131	55.00
8/2/66	C/R # 14838	% BZ # 742137	55.00
8/2/66	C/R # 14839	% BZ # 742111	125.10

- Payment in settlement may only be made by depositing the amount (Continued)
account of: SARL ELECTRONICS with Bank of America, Westwood Branch
1099 Westwood Boulevard, Los Angeles 24, California, U.S.A. and forwarding
to us a copy of deposit letter.

App. 53

STATEMENT

SARL ELECTRONICS

ROOM 606
GLOUCESTER BLDG
HONG KONG

PLEASE MAIL YOUR CHECKS
TO THE BANK - NOT TO OUR
HONGKONG OFFICE.

HONGKONG

At: Telephone for: in Mar
87, Chi Lung, Vietnam.

2-1 100-112 2 00

DATE: 7/25/66

DESCRIPTION AMOUNT

BALANCE AS PER LAST STATEMENT

XXXXXXXXXXXXXXXXXXXX

8/2/66	C/R # 15140	S BZ # 742220	10.20
8/2/66	C/R # 15141	S PS # 742140	10.00
7/1/66	C/R # 15207	S BZ # 1114	70.72
7/1/66	C/R # 15210	S BZ # 742220	11.00
7/1/66	C/R # 15211	S BZ # 741501	21.00
7/1/66	C/R # 15212	S PS # 741501	(21.00)
7/1/66	C/R # 15213	S PS # 742220	30.00
7/25/66	C/R # 15238	S PS # 705	30.12
7/25/66	C/R # 15237	S BZ # 1114	91.20
7/25/66	C/R # 15238	S PS # 705	42.17
7/25/66	C/R # 15239	S BZ # 1114	32.75
7/25/66	C/R # 15240	S BZ # 300370	151.00
7/25/66	C/R # 15241	S PS # 741305	1.10
7/25/66	C/R # 15242	S PS # 742100	57.00
7/25/66	C/R # 15243	S BZ # 742120	31.00
7/25/66	C/R # 15244	S BZ # 740501	13.25
7/25/66	C/R # 15245	S BZ # 742111	30.12
7/25/66	C/R # 15246	S BZ # 741031	30.00
7/25/66	C/R # 15247	S BZ # 742136	127.87
7/25/66	C/R # 15248	S BZ # 742137	10.00
7/25/66	C/R # 15249	S BZ # 742101	51.90
7/25/66	C/R # 15250	S BZ # 740507	27.70
7/25/66	C/R # 15251	S BZ # 742194	23.15
7/25/66	C/R # 15302	S PS # 705	61.90
9/20/66	C/R # 16848	S BZ # 742161	70.75
9/25/66	C/R # 16854	S FB # 417	66.05
"	" # 16855	S FB # 705	63.20
"	" # 16856	S BZ # 1114	83.20
"	" # 16857	S PS # 741505	55.40
"	" # 16858	S BZ # 740501	30.52
"	" # 16859	S PS # 742260	41.75
"	" # 16860	S BZ # 742120	22.43

Payment in settlement may only be made by depositing the amount to the account of: SARL ELECTRONICS with Bank of America, Westwood Branch (continued) 1099 Westwood Boulevard, Los Angeles 24, California, U.S.A. and forwarding to us a copy of deposit letter.

App. 54

STATEMENT

SARL ELECTRONICS

ROOM 606
GLOUCESTER BLDG
HONG KONG

PLEASE MAIL YOUR CHECKS
TO THE BANK - NOT TO OUR
HONGKONG OFFICE.

Page -7-

Hq. Veteran Foreign War
87, Thi Lang, Vietnam,
APO 96245, U.S. areas
Gia Dinh, Vietnam.

HONGKONG 14th October 1 66

DATE	INVOICE NO	DESCRIPTION	AMOUNT US \$
BALANCE AS PER LAST STATEMENT			
9/10/66	C/R # 16751	250 # 742126	141.15
"	" # 16752	500 # 742124	73.40
"	" # 16753	500 #	60.15
"	" # 16754	500 # 742021	62.55
"	" # 16755	500 # 741206	27.75
9/14/66	" # 16752	500 # 741206	217.50
"	" # 16752	500 # 1194	60.15
"	" # 16754	500 # 417	62.55
"	" # 16755	500 # 705	71.95
9/17/66	" # 16760	500 # 1194	27.75
"	" # 16762	500 # 417	65.00
"	" # 16763	500 # 705	60.75
"	" # 16764	500 # 741206	72.50
"	" # 16765	500 # 742021	25.55
"	" # 16766	500 # 742225	47.65
"	" # 16767	500 # 742200	71.75
9/20/66	" # 16765	500 # 741206	347.50
"	" # 16766	500 # 741206	15.55
"	" # 16767	500 # 742021	25.45
"	" # 16768	500 # 742260	21.35
"	" # 16769	500 # 74210	44.50
"	" # 16770	500 # 705	42.65
"	" # 16771	500 # 417	24.70
"	" # 16772	500 # 1194	75.10
9/23/66	" # 16773	500 # 741231	241.55
"	" # 16774	500 # 742111	123.75
"	" # 16775	500 # 742157	74.35
"	" # 16776	500 # 742126	102.75
"	" # 16777	500 # 742194	44.75
"	" # 16778	500 # 742257	95.70
9/30/66	" # 17732	500 # 705	77.20
"	" # 17733	500 # 417	22.25
"	" # 17734	500 # 1194	60.50
"	" # 17735	500 # 1194	50.45

- Payment in settlement may only be made by depositing the amount to the account of : SARL ELECTRONICS with Bank of America. Westwood Branch 1099 Westwood Boulevard, Los Angeles 24, California, U.S.A. and forwarding to us a copy of deposit letter.

App. 55

STATEMENT

SARL ELECTRONICS

ROOM 606
GLOUCESTER BLDG
HONG KONG

PLEASE MAIL YOUR CHECKS
TO THE BANK - NOT TO OUR
HONGKONG OFFICE.

Page - 8 -

Hq. Veteran Foreign War
87 Chi-Lang, Vietnam
APO 91043, U.S. Forces
Gia-Dinh, Vietnam

HONGKONG 14th October 1966

DATE	INVOICE NO	DESCRIPTION	AMOUNT US \$
XXXXXXXXXXXXXXXXXXXX			
9/1/66	C/R # 17745	% FB # 705	24.53
"	" # 17746	% FB # 417	55.50
"	" # 17747	% KO # 205370	80.20
"	" # 17748	% P # 741305	128.82
"	" # 17749	% MN # 742161	59.40
"	" # 17750	% P # 742260	115.50
"	" # 17751	% BZ # 742220	60.38
"	" # 17752	% D3S # 742111	44.00
"	" # 17753	% BZ # 740587	18.40
"	" # 17754	% D3S # 741031	150.13
"	" # 17755	% BZ # 742156	83.62
"	" # 17756	% D3S # 742194	62.45
"	" # 17757	% BZ # 742137	115.50
"	" # 17758	% MN # 749521	0.30
"	" # 17759	% D3S # 741206	244.00
9/4/66	" # 17700	% D3S # 741206	319.25
9/5/66	" # 17780	% SS # 1194	92.63
"	" # 17781	% FB # 705	73.80
"	" # 17782	% FB # 417	106.75
9/7/66	" # 17793	% SS # 1194	76.50
"	" # 17799	% FB # 417	42.50
"	" # 17780	% FB # 705	60.53
9/10/66	" # 16721	% SS # 1194	22.95
"	" # 16722	% FB # 705	35.78
"	" # 16723	% FB # 417	28.95
"	" # 16724	% P # 741305	46.85
"	" # 16725	% MN # 742161	58.90
"	" # 16726	% P # 742260	54.20
"	" # 16727	% BZ # 742220	95.00
"	" # 16728	% D3S # 742111	156.25
10/1/66	C/R # 14448	% SS # 1194	76.45
"	" # 14449	% FB # 417	83.28
"	" # 14450	% FB # 705	62.86

(Continued)

— Payment in settlement may only be made by depositing the amount to the account of : SARL ELECTRONICS with Bank of America. Westwood Branch 1099 Westwood Boulevard, Los Angeles 24, California, U.S.A. and forwarding to us a copy of deposit letter.

App. 56

STATEMENT

SARL ELECTRONICS

ROOM 606
GLOUCESTER BLDG
HONG KONG

PLEASE MAIL YOUR CHECKS
TO THE BANK - NOT TO OUR
HONGKONG OFFICE.

Hq. Veteran Foreign War
87 Chi-Lang, Vietnam
APO 96243, U.S. Forces
Gia-Dinh, Vietnam

Page - 9 -

HONGKONG 14th October 1966

DATE	INVOICE NO.	DESCRIPTION	AMOUNT US \$

10/1/66	C/R # 14451	% PS # 741305	34.75
"	" # 14452	% PM # 740521	44.05
"	" # 14453	% PS # 742260	23.68
"	" # 14454	% BN # 742220	45.25
"	" # 14455	% D3S # 742194	11.25
"	" # 14456	% PM # 742161	16.40
"	" # 14457	% BN # 740557	31.40
"	" # 14458	% D3S # 742111	26.33
"	" # 14459	% D3S # 742031	1.50
"	" # 14460	% BN # 742136	35.00
"	" # 14461	% CN # 742137	50.22
"	" # 14462	% D3S # 741206	205.00
"	" # 12463	% JS # 305370	155.23
10/5/66	" # 14494	% SS # 1194	71.35
"	" # 14495	% FB # 705	112.00
"	" # 14496	% FE # 417	79.95
"	" # 14497	% BN # 742220	29.28
"	" # 14498	% PS # 742260	15.75
"	" # 14499	% PM # 740521	34.30
"	" # 14500	% PS # 741305	50.15
10/7/66	" # 20113	% D3S # 741206	(7.25)
10/8/66	" # 20123	% SS # 1194	57.50
"	" # 20124	% FB # 705	51.75
"	" # 20125	% FE # 417	66.55
"	" # 20126	% PS # 741305	34.30
"	" # 20127	% PM # 740521	20.83
"	" # 20128	% PS # 742260	127.45
"	" # 20130	% BN # 742220	47.25
10/11/66	" # 20154	% PS # 741305	25.03
"	" # 20155	% BZ # 742220	47.33
"	" # 20156	% PM # 740521	39.32
"	" # 20157	% PS # 742260	76.00
"	" # 20158	% SS # 417	49.82

(Continued)
— Payment in settlement may only be made by depositing the amount to the account of : SARL ELECTRONICS with Bank of America. Westwood Branch 1099 Westwood Boulevard, Los Angeles 24, California, U.S.A. and forwarding to us a copy of deposit letter.

STATEMENT

SARL ELECTRONICS

ROOM 606
CLOUCESTER BLDG
HONG KONGPLEASE MAIL YOUR CHECKS
TO THE BANK—NOT TO OUR
HONGKONG OFFICE.

Page - 10 -

Hq. Veteran Foreign War
87 Chi-Lang, Vietnam
APO 96243, U.S. Forces
Gia-Dinh, Vietnam

HONGKONG 14th October 1966

DATE	INVOICE NO.	DESCRIPTION	AMOUNT US \$
***** BALANCE AS PER LAST STATEMENT			
10/11/66	C/R # 20159	\$ FB # 705	30.13
"	" # 20160	\$ SS # 1194	134.23
"	" # 20161	\$ BZ # 742137	116.75
"	" # 20162	\$ D3S # 741031	115.00
"	" # 20163	\$ D3S # 742111	125.00
"	" # 20164	\$ BZ # 742126	159.13
10/15/66	" # 20168	\$ BZ # 742220	24.53
"	" # 20189	\$ M1 # 740521	(.42)
"	" # 20190	\$ PS # 742260	90.00
"	" # 20191	\$ PS # 741305	8.18
"	" # 20193	\$ FB # 417	59.65
"	" # 20193	\$ PS # 705	69.70
"	" # 20194	\$ SS # 1194	80.03
10/19/66	" # 20611	\$ D3S # 741206	183.50
"	" # 20612	\$ SS # A-1194	77.23
"	" # 20613	\$ FB # 705	47.50
"	" # 20614	\$ FB # 417	60.35
10/20/66	" # 20624	\$ BZ # 742220	21.45
"	" # 20625	\$ PS # 741305	47.93
"	" # 20626	\$ M1 # 740521	14.65
"	" # 20627	\$ PS # 2260	(7.98)
"	" # 20628	\$ JR # 205370	107.55
"	" # 20629	\$ D3S # 741206	15.00
"	" # 20630	\$ BZ # 742137	48.25
"	" # 20631	\$ BZ # 742105	100.53
"	" # 20632	\$ D3S # 742111	69.25
"	" # 20633	\$ D3S # 741031	26.75
"	" # 20634	\$ D3S # 742194	106.45
"	" # 20635	\$ M1 # 742151	172.50
"	" # 20636	\$ BZ # 740587	73.30
"	" # 20637	\$ PS # 417	10.15
"	" # 20638	\$ SS # 1194	13.10
"	" # 20639	\$ FB # 705	17.53

— Payment in settlement may only be made by depositing the amount to the account of : SARL ELECTRONICS with Bank of America. Westwood Branch 1099 Westwood Boulevard, Los Angeles 24, California, U.S.A. and forwarding to us a copy of deposit letter.

App. 58

STATEMENT

SARL ELECTRONICS

Hq. Veteran Foreign War
87 Chi-Lap, Vietnam
APO 96243, U.S. Forces
Gia-Dinh, Vietnam

ROOM 606
GLOUCESTER BLDG
HONG KONG

PLEASE MAIL YOUR CHECKS
TO THE BANK - NOT TO OUR
HONGKONG OFFICE.

HONGKONG 14th October 1966

DATE	INVOICE NO.	DESCRIPTION	AMOUNT US \$
------	----------------	-------------	-----------------

~~XXXXXXXXXXXXXXXXXXXX~~

TOTAL: US\$ 22,352.48

— Payment in settlement may only be made by depositing the amount to the account of : SARL ELECTRONICS with Bank of America. Westwood Branch 1099 Westwood Boulevard, Los Angeles 24, California, U.S.A. and forwarding to us a copy of deposit letter.

App. 59

PLAINTIFF'S EXHIBIT 3

LEASE AGREEMENT

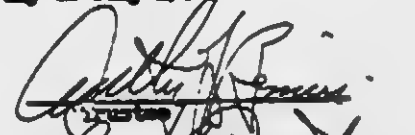


BY AN UNANIMOUS VOTE OF THE GENERAL MEMBERSHIP AT THE REGULAR SCHEDULED MEETING OF THE 5th OF JULY 1966, SAIGON POST 8316 VETERANS OF FOREIGN WARS OF THE UNITED STATES HERE-BY AGREES TO SUB-LEASE FROM VFW HEADQUARTERS SAIGON THE PROPERTY LOCATED AT 87 CHI LANG, SAIGON, VIETNAM, FOR USE AS THE POST HOME FOR SAIGON POST 8316.

TERMS OF THE SUB-LEASE REMAINS UNDER THE SAME CONDITIONS EXCEPT AS CHANGED AND/OR MODIFIED BY MUTUAL CONSENT OF BOTH PARTIES.


THE LEASE TAKES EFFECT AS OF THE 1st OF AUGUST 1966.

Signed and entered into this 15th day of July 1966.


Charles E. Phillips


Anthony J. Bennis
Trustee

Gerald W. West
Trustee

Robert J. Smith
Trustee

Approved:


Abraham H. Stein
Pacific Development Co.

App. 60

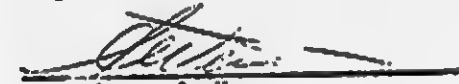
not operating profits of the Home which shall be subject to payment of


is further agreed by both parties that the Party of the Second Part, with the approval of the Party of the First Part, to that the same terms and conditions shall be in the Home Board of Governors of the VPI Headquarters and the Board of Governors of the sub-lease organization.

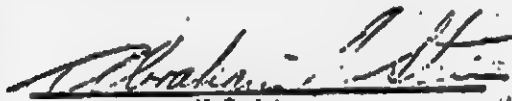
This agreement covers only the VPI Headquarters Home operation.

This agreement shall be in effect for a period of three (3) years, or until removal for an additional two (2) years.

Signed and entered into this 15th day of April


Abraham De Vera
Pacific Development Company


Abraham E. Stefan
Pacific Development Company


Abraham E. Stefan
Pacific Development Company

PLAINTIFF'S EXHIBIT 5

VETERANS OF FOREIGN WARS

OF THE UNITED STATES



Broadway at 34th Street New York City 10018

J. A. Cheatham, Quartermaster General

December 1, 1966

Dear V.F.W. Member:

At the recommendation of our writing, the chapters of the V.F.W. Posts listed below, by number and location, were canceled in October, 1966:

Post No.	Location
1094	Tienku, Vietnam
1409	San Karu Bay, Vietnam
3861	San Karu Bay, Vietnam
3884	San Hoa, Vietnam
8180	Nam Trang, Vietnam
8316	Solon, Vietnam

By direction of Commander-in-Chief Lucile M. Fry, all members in good standing in these Posts have been transferred to the

REPUBLIC OF SOUTH VIETNAM, Post No. 15,000
Veterans of Foreign Wars of the United States

The business and affairs of this Post will be administered from the National Headquarters. It will hold no meetings.

Its members will continue to receive the V.F.W. Magazine and will be entitled to full rights and privileges of V.F.W. membership. Upon returning to the United States, members of Post No. 15,000 may transfer to Posts serving their home communities or to Posts in other locations, under provisions of the V.F.W. National By-Laws, and no admission fees will be required.

We enclose your 1967 membership card in Post No. 15,000. Your dues are paid through December 31, 1967. Please inform us of any change in your address, giving your Post number, old address, and new address so we may keep the Veterans of Foreign Wars Magazine going to you.

Yours in comradeship,

J. A. Cheatham
J. A. Cheatham
Quartermaster General

App. 63

PLAINTIFF'S EXHIBIT 6

VETERANS OF FOREIGN WARS OF THE UNITED STATES

OFFICE OF THE QUARTERMASTER GENERAL

FINANCIAL STATEMENTS
AND
SUPPLEMENTAL SCHEDULES AND COMMENTARY
FOR THE YEAR ENDED AUGUST 31, 1967
AND
ACCOUNTANTS' OPINION

HASKINS & SELLS

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24,209

SARL ELECTRONICS, LTD.,
Appellant (Plaintiff)

v.

VETERANS OF FOREIGN WARS
OF THE UNITED STATES,
Appellee (Defendant)

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States Court of Appeals
for the District of Columbia
BRIEF FOR APPELLANT

FILED JUN 12 1970

Nathan J. Paulson
COUNSEL

Of Counsel for Appellant

TRAMMELL, RAND & NATHAN
1730 K Street, N. W.
Washington, D.C. 20006

WARREN E. MAGEE
1730 K Street, N. W.
Washington, D. C.

Attorney for Appellant



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*Sheet Metals' International Ass'n. v. N.L.R.B., 110 U.S. App. D.C. 302, 293 F.2d 141, cert. den. 82 S.Ct. 172, 368 U.S. 896	19
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2 Williston on Contracts (Third Edition 1959), Sec. 274	22
28 Am. Jur. 2d, Sec. 59, Estoppel and Waiver, Acceptance of Benefits	22
10 C.J.S., Beneficial Associations, Secs. 15 and 16	18

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24,209

SARL ELECTRONICS, LTD.,
Appellant (Plaintiff)

v.

VETERANS OF FOREIGN WARS
OF THE UNITED STATES,
Appellee (Defendant)

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANT

STATEMENT OF ISSUES PRESENTED
FOR REVIEW *

1. Whether the trial court erred in granting appellee's (defendant) Motion for a finding at the conclusion of the plaintiff's evidence and all the evidence.
2. Whether the trial judge should not have entered a judgment for the appellant (plaintiff) in the amount set forth in the Complaint.

*This case has not previously been before this Court.

STATEMENT OF THE CASE

Appellant (plaintiff), a corporation, filed a Complaint in the court below against appellee (defendant), Veterans of Foreign Wars of the United States,¹ a corporation chartered by Act of Congress (36 USCA, Secs. 111-120). The Complaint alleged that appellee did business through a Post in Saigon, Vietnam, entitled Saigon Post 8316, Veterans of Foreign Wars of the United States. Appellee corporation through its Post 8316 purchased from appellant various items of merchandise and services which were accepted by appellee at its Saigon, Vietnam Post 8316 on the dates and for the amounts set forth in invoices in the total sum of \$39,928.38, Exs. A and B to the Complaint. Demands for payment were made upon appellee but no part of this sum was paid. As a result, appellee is justly indebted and owes appellant the aforesaid sum, together with interest thereon at 6% per annum from the date of each such shipment and receipt (App. 3-4).²

Appellant in its Answer generally denied the allegations of the Complaint (App. 7).

STIPULATED FACTS

Pursuant to the pretrial proceedings held on December 12, 1969, the following facts were stipulated (App. 10):

Defendant, Veterans of Foreign Wars of the United States, is a corporation.

Defendant granted a charter to Saigon Post No. 8316 in Saigon, Viet Nam.

On or about December 1, 1966, defendant notified members of Saigon Post No. 8316 that its charter had been cancelled by defendant.

¹Sometimes hereinafter referred to as VFW.

²App. refers to the appellant's Appendix filed with this Brief.

The action came on for trial before Judge George L. Hart, Jr. of the court below, without a jury, on February 26, 1970 (App. 12). As the contentions of the parties had been discussed in Chambers when appellee withdrew its demand for a jury trial (App. 2), no opening statements of counsel were made. Appellant called as its witness Anthony G. Renieri, who being sworn, testified as follows:

The witness had military experience in the Far East since 1963, in Korea and in Vietnam; he was Area Supervisor or Sales Manager for appellant and was in Vietnam from December 1965 until August 1969; in January of 1966 he was approached by one Charles Phillips who presented a Charter from the Veterans of Foreign Wars of the United States and advised that he, Phillips, was the Commander of the Charter Post which was to be established in Vietnam, in Saigon; Phillips asked appellant's corporation to extend credit in various forms of merchandise and services so that this Post could get "off the ground" (App. 13-14).

Appellant's Ex. 1 was identified as the Charter granted appellee's Post 8316 in Saigon, Vietnam, which was received in evidence without objection (App. 14, 47). This Charter authorized Phillips and his group "to organize and are constituted a Post in the City of Saigon" in Vietnam as Post No. 8316 of the VFW of the United States (App. 47).

After exhibiting the Charter, Commander Phillips sought credit in various forms for merchandise and services. The witness testified this request was checked with appellant and because appellant had a very good working relationship with appellee's Post in Okinawa, appellant decided to extend appellee the credit for the goods and services requested by VFW Post 8316. Commander Phillips was informed that appellant would back the "VFW" and allow it to purchase what it needed to get the Post off the ground in the way of beverage coolers, ice machines, tables, chairs, bar equipment, entertainment equipment, amusement machines, beer and whiskey. The only reason appellant extended credit was not to Phillips as an individual but to the "VFW"

through its Post which "did have a Charter" from the United States organization, the Nationally known Veterans organization (App. 15). Subsequently, appellee, through the witness, wrote purchase orders and the Commander signed them as purchases for the VFW (App. 15-16).

The witness next identified Plaintiff's Ex. 2, which was a statement of account which had been submitted to appellee, itemizing each delivery of merchandise and services, which exhibit was received in evidence (App. 16, 48-58). Prior to the issuance of the purchase orders and the delivery of the equipment, the Post was located in a large villa-type building in the Chai Long area of Saigon (App. 16). A Board of Trustees under the Charter was elected by the general membership. The Board of Trustees of the VFW Post 8316 signed a Lease Agreement concerning the building in which the operations of the Post were to be conducted, P. Ex. 3 (App. 18, 59). Appellee's witness was placed on the Board of Trustees to see to it that the equipment and services were delivered to the Post under the existing credit arrangement (App. 18). As purchases were made, the Board of Trustees acted as a Committee to oversee the general operation, that the food, liquor and amusement machines were used and operated properly and that everything else was functioning (App. 18). No complaints were received about the Post's operations from the membership (App. 18).

P. Ex. 4 was next identified and was received in evidence. It was an invoice for merchandise sold and delivered to appellee (App. 18-19, 61). The witness testified that all of the goods in the account and invoices were actually delivered by appellant to appellee in Vietnam and that the tables, chairs and other equipment were actually installed and *used* by the VFW Post (App. 19). The amusement machines were to be operated on a 50-50 basis, that is, 50% of the proceeds would be paid to appellant and 50% to the VFW, the reason being that VFW did not have money with which to purchase these machines outright, so the machines were operated on this concession basis (App. 20).

Appellant installed the machines and kept them in operation and also kept in operation the ice making machines, the refrigerators, freezer, Butane gas stoves and dispensers. All this was done by appellant in order to get the VFW Post "off the ground and rolling" (App. 21).

The witness gave a complete breakdown on the items and services which had been furnished by appellant to the VFW (App. 21-22). A National representative of the National Headquarters of the Veterans of Foreign Wars of the United States visited the operation in Vietnam. This representative came to see the operation, came to the Post, congratulated everyone at the Post on the job that was being done, stated the National Organization was happy with the way the Post looked and because it was clean, also because it was serving members with good food and commended everybody on the job being done (App. 22). The Post did a real landslide business. When the Post opened, a membership campaign was started on behalf of the VFW and in a few days VFW Post 8316 obtained more than eight hundred members, all of whom were sold National membership cards. Appellee sends these cards to the Post, the Post sells them to members for \$5.00 and \$2.00 of this goes to Appellee. Concerning life members, \$100 to \$105 of a life membership goes back to Appellee (App. 23).

The Post also engaged in fund raising activities for the Appellee. Thus, on Poppy Day, poppies are sent from the United States to the Post and the Post representatives sell the poppies for contributions varying from fifty cents to one, two or five dollars. On Poppy Day General Westmoreland, who was the Commander in Chief of the Vietnam forces, lunched at the VFW Club, was the first to buy a poppy and publicized the occasion (App. 24). The proceeds of the poppy sales were all sent to Appellee (App. 24).

The Post served a very useful purpose for veterans and GIs because it furnished them a place where they could go for club activities, lunches, suppers and to spend their evenings. Only veterans or GIs are entitled to membership pri-

vileges and they are the only persons who can come into the Post (App. 24).

All the goods and services furnished were checked two, three and four times a month by the witness and he saw to it personally that all of the equipment and all of the services set forth on P. Exs. 2 and 4 were furnished by appellant to appellee's Post and that all the equipment installed was functioning. Appellee obtained APO³ privileges for the Post and it had an APO number. Because it had this APO number appellant could sell goods and furnish services to VFW Post 8316 duty free from import taxes for the benefit of veterans and GIs in Vietnam (App. 25, 26). Meetings of veterans were held in the Post and social activities were conducted there for the entertainment of the troops (App. 26). Other representatives from time to time came from the National Headquarters to inspect the Post operation (App. 26).

Commander Frye, the Commander in Chief of appellee, Mr. Moore, Assistant Commander in Chief of appellee and a Mr. Devore, like Mr. Surrer, representatives of appellee, complimented the activities and the way the Post had grown in such a short time and for the way it was servicing the troops and people who were there, as well as the veterans. They stated they were happy with the operation as it stood. (App. 26)

At one time the witness spoke to Mr. Stein, the Manager of the VFW Post 8316, and Mr. Phillips, its Commander, about payment of appellant's bills. They asked that they be given a few more weeks and when the second pay period came around they would pay the bills, but, in the meantime, they had sent two payments of \$4,000 and \$2,000 in the mail. Manager Stein and Commander Phillips were strong people and insisted the VFW operation was "on the up and up." Appellant's representatives believed this and extended credit on this basis to the VFW.

³ APO stands for Army Post Office.

Prior to October, 1966 appellant's bills had been submitted to the Post of the VFW but they had not been paid (App. 28). A notice was sent out from the National Headquarters thereafter abolishing and closing down Post 8316 and revoking its Charter.

P. Ex. 5 was identified as the notice advising that Post 8316 was closed down by appellee without notice and it had taken over the control of all business and operations of the Post. P. Ex. 5 was received in evidence (App. 29). After appellee closed Post 8316 down and took it over, no bills of appellant were paid and none of its goods, wares and merchandise, not even the leased goods, were returned or delivered to appellant. Appellee retained all such property. All memberships were transferred to another VFW Post without notice by appellee (App. 29).

The witness spoke to a Mr. Adco, a representative from appellee, about appellant's bills. In reply Mr. Radco asked the witness if appellant would be interested in financing another VFW Post in order to get these bills paid from the monies from the new VFW Post. Nothing ever came of this because the National Headquarters did not open a VFW Post and the Post activities "just lost all steam" (App. 30-31).

P. Ex. 6 was identified and received in evidence as the financial statements of the appellee. This exhibit showed that appellee received from sources generated by Post activities, like the activities of Post 8316 in Saigon, the sum of \$1,257,048.22 a year. On questioning by the Court it was established that not one dime had been paid by appellee to appellant and that the sum of \$39,928.38, with interest thereon, is due and payable to appellant (App. 31-32). Notwithstanding that much of the equipment at the Post was there on lease, not only were the lease payments not paid, but none of the equipment was ever returned or paid for by appellee (App. 33-34). The Court was asked to judicially notice the statute under which appellee was incorporated and operated (36 USCA, Secs. 111 through

120). This the Court did (App. 37). Appellant rested (App. 38).

Appellee was asked by the Court if it desired to offer any evidence and appellee's counsel replied appellee only wanted to make a Motion for judgment in favor of appellee (App. 38). Appellant argued that the Post was an operation of appellee. Appellee chartered the Post, supervised and inspected it and received dues, monies and benefits from the Post. Appellee finally closed down and took over the operations of Post VFW 8316 and all of its properties, including appellant's equipment, etc. (App. 38-45). The Court again asked counsel for appellee whether counsel desired to present anything further. Counsel replied "nothing further" (App. 45).

The Record shows the foregoing facts were undisputed. The stipulated facts the Pretrial Order (App. 10) upon which the Court did not comment are:

1. Defendant, Veterans of Foreign Wars of the United States, is a corporation.
2. Defendant granted a Charter to Saigon Post 8316 in Saigon, Vietnam.
3. On or about December 1, 1966 defendant notified members of Saigon Post No. 8316 that its Charter had been cancelled by defendant.

FINDINGS AND RULING OF THE COURT BELOW

The court below as we interpret the evidence made the following abortive findings during the trial:

4. Appellee established Post 8316 as "a Post" of appellee (App. 40).
5. Appellee has a certain control over it (Post 8316) just like National fraternities have control over local chapters and like Labor Unions have control over locals * * * (App. 43).

6. Had service of process been made on Post 8316, the court below would give "judgment fast" on appellant's claim (App. 44).

7. Apparently sometime before January or February of 1966—how long before, we do not know—the National corporation of the VFW granted a Charter to Post 8316 in Saigon. One Charles Phillips was elected the Commander of the (55) VFW Post. This Charles Phillips approached Mr. Anthony Renieri, who was a salesman for the plaintiff, and who had considerable experience in dealing with VFW posts, more like in Okinawa (App. 45).

8. Mr. Phillips asked for a line of credit for Post 8316. Mr. Renieri said he didn't know whether or not they could grant the line of credit or not, he would have to go further up, and he went further up and they said that they would give the credit and as Mr. Renieri quite frankly stated, they gave the credit to Post 8316 (App. 45).

9. At no time did Charles Phillips, as far as the evidence is concerned, ever have the slightest authority to bind the National organization for any purchase or in any way thereafter (App. 45).

10. Apparently certain equipment was sold to the club on credit, and certain equipment was leased to them—gambling and other equipment—of which they were to get a fifty-fifty cut of the net, and Mr. Renieri was made a member of the Board of Trustees of Post 8316 to, in his words, watch over his investment. In what? Equipment sold to Post 8316 (App. 45).

11. There are not here too many purchase orders, but you have submitted a few. I notice one, 23 February 1966, for a Frigidaire, and it is signed for to be sent to Post 8316, not VFW. There are other purchase orders to the same effect (App. 45).

12. There is not the slightest question that the credit (56) was granted to the Post, and that at no time did the National organization ever permit its credit to be pledged, that no one ever pledged its credit who had authority or

didn't have authority purported to pledge its credit (App. 46).

13. The plaintiff itself at no time relied, as far as the evidence goes, on the credit of the National organization, but according to Mr. Renieri, he stated quite frankly they relied on the credit of the local Post 8316 (App. 46).

Against this background the court below granted appellee's Motion on the ground there is no liability on the National organization for the credits extended to VFW Post 8316, which appellee chartered, managed, supervised, closed down, and whose memberships appellee transferred (App. 46). No written Findings of Fact other than those stated as Findings 1 through 13 in this Brief, *supra*, were filed by the Court under Rule 52 (FRCP). On this record the court below erroneously signed an Order granting appellee's Motion for Judgment (App. 12).

STATUTE INVOLVED

Appellee was incorporated by Congress and does business under the following provisions of 36 USCA:

Sec. 111. Corporation created

The following persons, to wit: James E. Van Zandt, et al * * *; and their successors, who are, or who may become, members of the Veterans of Foreign Wars of the United States, a national association of men who as soldiers, sailors, marines and airmen have served this Nation in wars, campaigns, and expeditions on foreign soil or in hostile waters, and such national association, are created and declared a body corporate, known as the Veterans of Foreign Wars of the United States. May 28, 1936, c. 471, Sec. 1, 49 Stat. 1390; May 29, 1953, c. 85, Sec. 1, 67 Stat. 40.

Sec. 112. Completion of organization

The said persons named in section 111 of this title, or their successors, and such other persons as are duly accredited delegates from any local post or State department of the existing national association

known as the Veterans of Foreign Wars of the United States, under its constitution and bylaws, are authorized to meet and to complete the organization of said corporation, by the adoption of a constitution and bylaws, the election of officers, and to do all other things necessary to carry into effect and incidental to, the provisions of this chapter. May 28, 1936, c. 471, Sec. 2, 49 Stat. 1390.

Sec. 113. Purposes of corporation

The purposes of this corporation shall be fraternal, patriotic, historical, and educational; to preserve and strengthen comradeship among its members; to assist worthy comrades; to perpetuate the memory and history of our dead, and to assist their widows and orphans; to maintain true allegiance to the Government of the United States of America, and fidelity to its Constitution and laws; to foster true patriotism; to maintain and extend the institutions of American freedom; and to preserve and defend the United States from all her enemies, whomsoever. May 28, 1936, c. 471, Sec. 3, 49 Stat. 1391.

Sec. 114. Powers of corporation

The corporation created by this chapter shall have the following powers: To have perpetual succession with power to sue and be sued in courts of law and equity; to receive, hold, own, use, and dispose of such real estate, personal property, money, contract, rights, and privileges as shall be deemed necessary and incidental for its corporate purposes; to adopt a corporate seal and alter the same at pleasure; to adopt, amend, apply, and administer a constitution, bylaws, and regulations to carry out its purposes, not inconsistent with the laws of the United States or of any State; to adopt, and have the exclusive right to manufacture and use such emblems and badges as may be deemed necessary in the fulfillment of the purposes of the corporation; to establish and maintain offices for the conduct of its business; to establish, regulate, or discontinue subordinate State and Territorial subdivisions and local chapters or posts; to publish a magazine or other publications, and

generally to do any and all such acts and things as may be necessary and proper in carrying into effect the purposes of the corporation. May 28, 1936, c. 471, Sec. 4, 49 Stat. 1391.

Sec. 115. Membership

No person shall be a member of this corporation unless he has served honorably as an officer or enlisted man in the Armed Forces of the United States of America in any foreign war, insurrection, or expedition, which service shall be recognized as campaign-medal service and governed by the authorization of the award of a campaign badge by the Government of the United States of America. May 28, 1936, c. 471, Sec. 5, 49 Stat. 1391; May 29, 1953, c. 85, Sec. 2, 67 Stat. 40.

Sec. 116. Acquisition of assets and liabilities of existing association

Said corporation may and shall acquire all of the assets of the existing national association known as the Veterans of Foreign Wars of the United States upon discharging or satisfactorily providing for the payment discharge of all its liabilities. May 28, 1936, c. 471, Sec. 6, 49 Stat. 1391.

Sec. 117. Exclusive right to name, seal, emblems, and badges

The said corporation shall have the sole and exclusive right to have and to use, in carrying out its purposes, the name "Veterans of Foreign Wars of the United States" and the sole and exclusive right to the use of its corporate seal, emblems, and badges as adopted by said corporation. May 28, 1936, c. 471, Sec. 7, 49 Stat. 1391.

Sec. 118. Reports to Congress

Said corporation shall, on or before the 1st day of January in each year, make and transmit to the Congress a report of its proceedings for the preceding fiscal year: PROVIDED, HOWEVER, That said report shall not be printed as a public document. May 28, 1936, c. 471, Sec. 8, 49 Stat. 1391; Aug. 30, 1964, Pub. L. 88-504, Sec. 4(10), 78 Stat. 637.

Sec. 119. Agents for service of process

As a condition precedent to the exercise of any power or privilege herein granted or conferred, the Veterans of Foreign Wars of the United States shall file in the office of the Secretary of State of each State the name and post-office address of an authorized agent in such State upon whom legal process or demands against the Veterans of Foreign Wars of the United States may be served. May 28, 1936, c. 471, Sec. 9, 49 Stat. 1391.

Sec. 120. Reservation of right to amend or repeal chapter

The right to repeal, alter, or amend this chapter at any time is expressly reserved. May 28, 1936, c. 471, Sec. 10, 49 Stat. 1391.

ARGUMENT**I. THE TRIAL COURT ERRED IN GRANTING JUDGMENT IN APPELLEE'S FAVOR**

Post 8316 of the VFW was but an arm, agency or office of the appellee, a corporation chartered by Congress, and the Post acted within its authority or apparent scope of its authority in purchasing on credit goods and services from appellant, which rendered appellee liable therefor.

Appellee corporation was chartered by Congress (36 USCA, Secs. 111-120). Sec. 111 declared appellee to be a national association of Veterans and created and declared it "a body corporate, known as the Veterans of Foreign Wars of the United States." Sec. 112 authorized appellee corporation to organize, adopt a constitution and by-laws, elect officers and do all other things necessary to carry into effect the provisions of the Statute. Sec. 113 describes appellee's purposes as being fraternal, patriotic, educational, to preserve and strengthen comradeship among members, to assist them and to perform other acts fostering patriotism, to publish a magazine, etc. Sec. 114 states appellee is granted

perpetual succession with power to sue and be sued in courts of law and equity, to receive, hold, own, use and dispose of such real estate, personal property, money, contract, rights and privileges as shall be deemed necessary and incidental for its corporate purposes; to adopt a seal; to adopt a constitution, by-laws and regulations; to adopt and have exclusive right to manufacture and use such emblems and badges as deemed necessary; to establish and maintain offices; to establish, regulate or discontinue State and Territorial subdivisions and local chapters or posts; to publish a magazine, etc. and do any and all such acts and things as may be necessary and proper in carrying into effect the purposes of the corporation. Sec. 115 restricts membership to those who have served honorably as an officer or enlisted men in the Armed Forces of the United States in any foreign war, insurrection or expedition. Sec. 117 gives appellee the sole and exclusive right to use the name "Veterans of Foreign Wars of the United States" and to use its seal, emblem and badges. Sec. 119 requires as a condition precedent to the exercise of any power or privilege, granted or conferred, appellee shall file in the office of the Secretary of State of each State the name and address of an authorized agent in such State upon whom legal process or demands against appellee may be served.

Appellee is incorporated as a United States corporation. It is not chartered under the law of any State. Its corporate authority is derived from 36 USCA, Secs. 111-120. This Federal Charter authorizes appellee as a business corporation to carry out all of the purposes of its chartering throughout all States and elsewhere. Its business functions are carried out through Posts chartered by appellee. VFW Post 8316 as chartered in order to obtain veterans as members and in order to furnish facilities and services to veteran members of the armed services serving in Vietnam for appellee's benefit. These Post activities are authorized corporate activities. In fact, VFW Post 8316 is but an arm or office of appellee and was not separately incorporated. VFW Post 8316 furnished a Charter by appellee, authorizing the use of appel-

lee's name, seal, symbols and offering membership privileges to veterans. Credit by appellee sales corporation, was extended on the strength of appellee's worldwide standing as a Veterans' Beneficial Association corporation. The Post collected membership dues, forwarded 40% of all dues to appellee, furnished entertainment, quarters and facilities for veteran members and conducted money collecting activities like poppy sales, to obtain funds, all of which were sent to appellee. Appellee is in no position to claim that the credit extended by appellant, was not made in good faith and on the credit of appellee. Appellant in no sense extended credit to the officers or individual members of VFW Post 8316. As appellant is a Federal corporation, organized to do business among the States and elsewhere, having a national citizenship, it functioned as such in furthering its corporate purposes in its Post activities in Vietnam, like the almost similar corporation, Disabled American Veterans, incorporated by Congress (36 USCA, Sec. 90a-90j).

Rice v. Disabled American Veterans, 295 F. Supp. 131 (U.S.D.C. D.C. 1968).

The functions of the VFW Post 8316 are in fact corporate activities of appellee and the Post's authority is the same as the authority conferred upon appellee by Congress.

In Re Emil Hubsch Post No. 596, 278 App. Div. 460, 106 N.Y.S. 2d 727.

In holding appellee was subject to the payment of unemployment insurance contributions in New York State, the Supreme Court, Appellate Division, held the Post's powers are the powers of the parent corporation and are to be found in the Statute (36 USCA, Sec. 111-120). The Supreme Court held that appellee was not exempt from unemployment insurance benefits because it was not incorporated exclusively for charitable purposes, but on the contrary is engaged extensively in fraternal and social activities, from which considerable income is derived. In making this holding the Supreme Court held (p. 729):

The respondent is an unincorporated association, being a local post of the Veterans of Foreign Wars of the United States, with more than 500 members. The national organization, authorized to establish local posts of which respondent is one, was incorporated by an Act of Congress in 1936. 36 U.S. C.A. Secs. 111-120. The purposes of the national corporation are therein stated as follows, Sec. 113: "The purposes of this corporation shall be fraternal, patriotic, historical, and educational; to preserve and strengthen comradeship among its members; to assist worthy comrades; to perpetuate the memory and history of our dead, and to assist their widows and orphans; to maintain true allegiance to the Government of the United States of America, and fidelity to its Constitution and laws; to foster true patriotism; to maintain and extend the institutions of American freedom; and to preserve and defend the United States from all her enemies, whomsoever."

The respondent is not incorporated, and as a local post of the national organization, its purposes of organization are dependent upon the powers of the parent corporation. To ascertain those purposes recourse must be had to the act by which it was incorporated, and to that only. *Matter of De Peyster's Estate*, 210 N.Y. 216, 104 N.E. 714; *Matter of Beekman's Estate*, 232 N.Y. 365, 134 N.E. 183; *Matter of Kennedy's Estate*, 240 App. Div. 20, 269 N.Y.S. 136, affirmed 264 N.Y. 691, 191 N.E. 629.

In examining the purposes for which the parent organization was organized it is clear that some of those purposes are charitable and educational. It seems equally clear that some of those purposes are fraternal and social.

The holding of the Supreme Court, Appellate Division, in *Hubsch* was affirmed by the Court of Appeals of New York in *In Re Emil Hubsch No. 596 Veterans of Foreign Wars of the U.S.A., Appellant*, 303 N.Y. 682, 102 N.E. 2d 838.

Appellant's corporate functions outside of its national headquarters constitute authorized corporate business activities. Appellee may invest in credit unions for the purpose of earning income and this activity has been upheld as authorized and proper because the Federal Statute and the Constitution and By-Laws of appellee do not prohibit such activities.

Chisholm v. State Capitol Credit Union, 278 Minn. 31, 153 N.W. 2d 156 (1967)

The court below found VFW Post 8316 liable for appellant's just claim (App. 44). As the Post was acting within the scope of appellant's powers and under its Charter, the credits obtained from appellant were the legal responsibility of appellee, particularly as appellee received all the benefits from appellant's expenditures, goods and services. The court below erred in entering a judgment after the closing of all the evidence in favor of appellee and should have entered judgment for appellant in the undisputed amount of appellant's claim.

**II. VFW POST 8316 ACTED WITHIN THE ACTUAL OR
APPARENT SCOPE OF ITS AUTHORITY IN
OBTAINING CREDIT FROM APPELLANT—
HENCE APPELLEE IS LIABLE**

As we have pointed out, the undisputed facts establish appellee chartered, inspected, approved, closed down and managed the activities of Post 8316. It was fully informed of the Post obtaining from appellant on credit the goods and services proven to have been furnished by the undisputed evidence. Appellee's corporate purpose is to preserve and strengthen comradeship among its veteran members, to foster patriotism and to assist worthy comrades, i.e., veterans serving the United States in the war in Vietnam. Post 8316 was chartered to effect these purposes of appellee. As chartered, appellee on its credit obtained through its VFW Post 8316 the goods and services admittedly furnished in good

faith by appellant. Appellee having clothed Post 8316 with its exclusive emblems, badges, distribution of membership cards and the conduct of money raising affairs for appellee, all in the name of VFW, gave authority, or at least gave apparent authority, to the Post to incur financial obligations in the furtherance of these purposes which are binding upon appellee.⁴ The extent of appellee's control in the creating, managing, running, closing down and thereafter managing all liquidation affairs of Post 8316 is clear from appellee's notice to VFW members in Vietnam, dated December 1, 1966 (P. Ex. 5). This notice had been produced as the only written evidence of appellee's actions in closing down the business and affairs of Post 8316 in pretrial discovery proceedings and was admitted evidence without objection (App. 29). This exhibit appears in full in the Appendix (p. 62) and shows the absolute control in the creation, management, closing down, management of all business and affairs of the Post *after* the cancelling of its Charter. It demonstrates the liquidation, management and distribution of all assets of the Post were to be administered directly by appellee, all without notice to members or creditors. It also demonstrates all meetings of the membership were closed down, all functions of the Post were administered directly by appellee and all members of the Post were arbitrarily transferred to VFW Post 15000 in Vietnam, all without notice to the members or creditors. No efforts by way of assignment of assets were made by appellee to protect creditors and no receivership was conducted by it to see to that the monies and assets of Post 8316 were administered in the payment and discharge of the obligations of VFW Post 8316. 10 *C.J.S., Beneficial Associations*, Secs. 15 and 16, pp. 258-259, state that in a dissolution of beneficial associations, while assignments for the benefit of creditors may be used, a receivership is the better practice to be utilized in the protection of members and creditors.

⁴See in this situation *Marchetti v. Olyowski*, 86 U.S.App.D.C. 215, 181 F.2d 285 (1950).

In incurring the financial obligations with appellant, VFW Post 8316 acted within its authority or apparent authority in furtherance of the purposes of appellee and appellee is liable therefor.

In *United States v. Acme Process Equipment Co.*, 385 U.S. 138, 87 S. Ct. 350 (1966), the Court held where a corporation authorizes transactions in furtherance of the corporate purposes in the "field" and the personnel in the field engage in activities (in *Acme* this involved kickbacks by corporate representatives to Government personnel), the corporation is responsible for such conduct. In making this holding the Supreme Court stated (pp. 147, 356):

They were the kind of company personnel for whose conduct a corporation is generally held responsible. Cf. *Gleason v. Seaboard Air Line R. Co.*, 278 U.S. 349, 49 S. Ct. 161, 73 L. Ed. 415. Since *Acme* selected those agents to carry on its business in obtaining and performing government contracts, there is no obvious reason why their conduct in that field should not be considered as *Acme's* conduct, particularly where it touches the all-important subject of kickbacks.

To the same effect is a decision of this Court in *Sheet Metal Workers' International Ass'n. v. N.L.R.B.*, 110 U.S. App. D.C. 302, 293 F.2d 141, cert. den. 82 S. Ct. 172, 368 U.S. 896. In this case one of the issues was whether the Union involved was legally responsible for unfair labor practices of two locally chartered Unions numbered 65 and 70. In holding the Union responsible for such unfair labor procedures by the locals, notwithstanding that the Union claimed it had ordered the locals not to engage in such conduct, this Court pointed out (p. 148) that the "locals are * * * governed by * * * the Association" (Union), and stated (p. 149):

The International in its effect concedes all this but contends that it cannot be held responsible for the Locals' conduct because, as the record affirma-

tively establishes, it ordered the Locals not to pursue these objectives by means of inducing employees to refuse to handle Burt's products. A principal is not, however, as a matter of law excused from responsibility for his agent's conduct within the general scope of his authority by the fact that the principal has forbidden the use of specific acts by the agent in carrying out the authority. *National Labor Relations Board v. International Longshoremen's and Warehousemen's Union*, 9 Cir., 1960, 283 F.2d 558, 565; Restatement (Second), Agency Sec. 230 (1958).

Trial Judge Hart in a similar case involving an action by the publisher of entertainment pass books against a theatre chain corporation for breach of contract held where an employee in the field, a manager, enters into a promotion contract for the benefit of the theatre chain corporation, such contact is valid and binding because it is within the apparent authority of the employee. Thus, in granting a preliminary injunction against the theatre corporation, Judge Hart in *Tel-Ads, Inc. v. Trans-Lux Playhouse, Inc.*, 232 F. Supp. 198 (U.S.D.C.D.C. 1964), at p. 200, reached the following conclusion of law:

The contract entered into between plaintiff and defendants * * *, reduced to writing on November 21, 1963, is valid and binding upon defendants since Edwin Rosenfeld, District Manager of defendants' theatres, who entered into the said contract, had apparent authority to so act.

In the hearing of *Tel-Ads, Inc.* on the merits, Judge Youngdahl, sitting without a jury, reached the same conclusion as Judge Hart and held the theatre chain corporation bound by the agreement entered into by the local manager on the ground that it was within the apparent authority of that employee to make such a contract, and it could not later be cancelled by the theatre chain. In reaching this conclusion, Judge Youngdahl held (p. 200):

In July, 1962, Rosenfield, after gradually gaining responsibility in the Trans-Lux operations since his employment in 1951, was named district manager in charge of the Baltimore-Washington area, which contains six theatres. His duties included supervising the theatres and engaging in advertising, publicity and promotion. He had the authority to issue various types of free passes to the theatre, and undertook various promotional ideas.

VFW Post 8316 clearly acted within its authority or apparent scope of authority in its operations in Vietnam on behalf of appellee, its principal; therefore, appellee is legally responsible for the credits thus obtained from appellant.

**III. APPELLEE RECEIVED THE BENEFITS OF THE TRANS-
ACTIONS INVOLVED WHICH ADVANCED ITS
CORPORATE PURPOSES; THEREFORE IT IS
ESTOPPED TO DENY ITS LIABILITY
TO APPELLANT**

As we have shown in our Statement of the Case, the undisputed evidence shows that merchandize, services and rentals were sold to, performed, delivered and accepted by appellee's Post 8316. The court below found (App. 44) that the Post received all of the goods and services described in the Complaint and established by the undisputed evidence, and appellant was entitled to a judgment "fast" against the Post, had it been the defendant and been served with process. It is undisputed that the goods and services furnished appellee by appellant were used and expended in furthering the purposes of appellee in securing new members, that is, veterans in Vietnam, in furnishing a facility for the use, feeding and recreation of such members, and in promoting the social purposes of appellee. It is undisputed that the operation was successful, obtained many members in the use of appellant's goods and services and that appellee's corporate purposes and its members were benefited and com-

radeship among members was promoted. All of these benefits, including the rented machines which have never been paid for, were taken over and utilized or disposed of by appellee. In such circumstances, appellee is estopped to disclaim its responsibility to pay for the goods and services furnished, accepted and retained for appellee's benefit. All this was done in the actual or apparent scope of the Post's authority.

The general rule is stated in *2 Williston on Contracts (3rd Ed. 1959)*, Sec. 274, as follows:

The principal's authorization may neither expressly nor impliedly request any expression of assent by the agent as a condition of the authority and in such case any exercise of power by the agent within the scope of the authorization, during the term for which it was given or within a reasonable time if no fixed term was mentioned, will bind the principal.

Sec. 274 of Williston was cited with approval by the Supreme Court in *National Equipment Rental, Ltd. v. Szukhent*, 375 U.S. 311, 316, 84 S. Ct. 44, 414.

As stated in *28 Am. Jr. 2d*, Sec. 59, p. 677, *Estoppel And Waiver, Acceptance of Benefits*:

Estoppel is frequently based upon the acceptance and retention, by one having knowledge or notice of the facts, of benefits from a transaction. * * * it precludes one who accepts the benefits from repudiating the accompanying or resultant obligation.

Numerous cases are cited in Note 20, pp. 677-678, in the support of this statement and several Annotations in ALR.

And see *United States v. Fidelity and Casualty Co. of New York*, 402 F.2d 893, 897-898 (C.C.A. 4, 1968), and *Marchetti v. Olyowski*, 86 U.S. App. D.C. 215, 181 F.2d 285 (1950), also cited *supra*, p. 18.

Moreover, where two persons engage in an operation and the activities of one, like the chartering by appellee

of Post 8316, creates a situation in which the other person involved suffers damages, the person creating the situation is legally responsible to the other.

We do not agree with the findings and conclusions of the court below (App. 44), which in effect say credit was not extended to the national organization and no one was authorized to pledge the national organization's credit. We submit on the undisputed evidence, the stipulated facts and the factual findings involved that the court below was in error in granting judgment for the defendant and should have entered judgment in the amount claimed for appellant.

CONCLUSION

In conclusion, we submit that the Judge's abortive findings do not support his judgment entered in favor of the appellee, that the judgment below should be reversed and the case remanded for further proceedings including instructions to enter judgment in favor of the plaintiff in the amount established by the evidence as due, that is the sum of \$39,928.38, together with interest thereon.

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IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24,209

SARL ELECTRONICS, LTD.,
Appellant (Plaintiff)

v.

VETERANS OF FOREIGN WARS
OF THE UNITED STATES,
Appellee (Defendants)

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEE

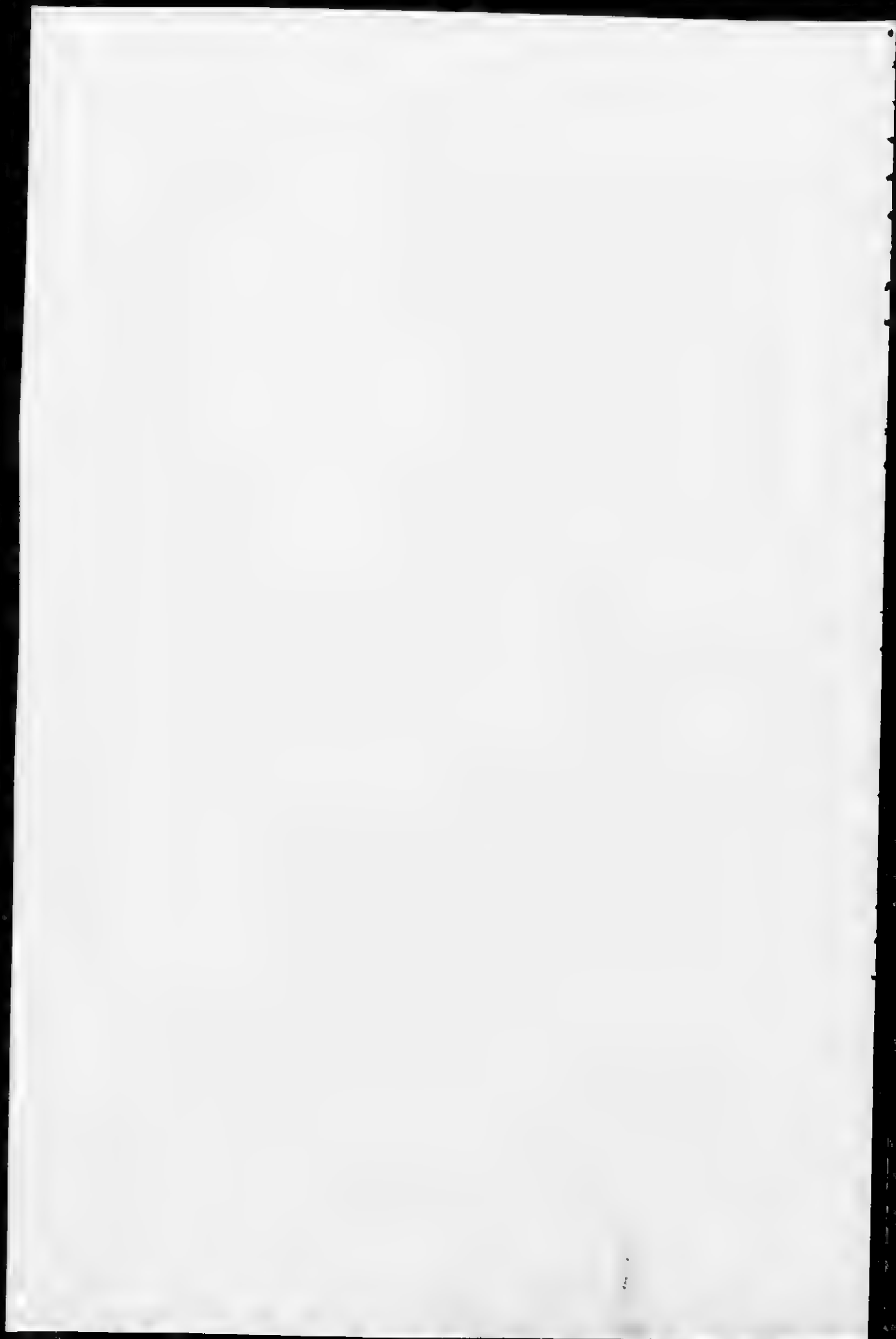
United States Court of Appeals
for the District of Columbia Circuit

FILED JUL 10 1970

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(i)

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BRIEF FOR APPELLEE

STATEMENT OF ISSUES PRESENTED FOR REVIEW

The appellee (defendant) accepts the statement of the Issues as stated by the appellant (plaintiff). (Appellant's Brief, p. 1)

STATEMENT OF THE CASE

The appellant (plaintiff) Sarl Electronics, Ltd., is a Hong Kong corporation, which was doing business in the Far East,

particularly in Saigon, Vietnam. The appellee (defendant) Veterans of Foreign Wars of the United States is a United States corporation, chartered by Act of Congress (36 USCA Sections 111-120) whose stated purposes are "fraternal, patriotic, historical, and educational . . ." The appellant filed a Complaint in the Court below seeking sums of money from appellee for goods and services delivered to VFW Post 8316 by appellant in Saigon, Vietnam. The appellee filed an Answer denying that it was in any way liable to appellant for the claims made. (App. 7)

The case came on for trial before Judge George L. Hart on February 26, 1970. After counsel for both parties signed a praecipe withdrawing a demand for a jury trial the trial proceeded before Judge Hart, sitting both as the judge and the trier of fact. (App. 2) At the conclusion of appellant's case in chief, the Trial Court granted appellee's Motion for Judgment. (App. 46)

The appellant called as its only witness Mr. Anthony G. Renieri, who was a sales manager for appellant, Sarl Electronics, Ltd. (App. 13) Mr. Renieri testified that sometime prior to January or February 1966, the appellee, Veterans of Foreign Wars of the United States issued a charter to VFW Post 8316 in Saigon, Vietnam. (App. 13) About January or February of 1966 a Mr. Charles Phillips and Mr. Renieri had a conversation. (App. 13-14) Mr. Phillips identified himself as the Commander of VFW Post 8316 in Saigon (App. 13-14), having been elected to that office by the general membership of that Post. (App. 35) Mr. Renieri testified that Mr. Phillips requested him to extend a line of credit on behalf of Sarl Electronics, Ltd., in various forms for goods and services. (App. 14) Mr. Renieri stated he would have to "check with his manager". (App. 14) Mr. Renieri stated he would be willing to furnish "beverage coolers and ice machines, tables, chairs, bar equipment, entertainment equipment, such as amusement machines, beer and whiskey also; that we could go the route with him because we knew that the club would be a worthy thing and

we would make out on it." (App. 15) In a direct answer to a question by appellant's counsel Mr. Renieri stated that "in extending the credits" on behalf of Sarl Electronics he extended this credit "to VFW Post 8316", and not the appellee, Veterans of Foreign Wars of the United States. (App. 33)

Mr. Renieri further stated he was placed on the Board of Trustees of VFW Post 8316 either to "oversee" the operation, or to "protect his investment". (App. 36) The purchase orders submitted by appellant were for purchases made by VFW Post 8316, not the appellee. (App. 45) The proceeds on the "payoffs" from the gambling machines were to be divided 50/50 between the appellant, Sarl Electronics, Ltd. and VFW Post 8316. (App. 19-20) Mr. Renieri did not know how or who procured the APO number for VFW Post 8316. (App. 24-25) Mr. Renieri did not know who took over the physical facilities of the VFW Club in Saigon after the charter of VFW Post 8316 was cancelled by the Veterans of Foreign Wars of the United States. (App. 30)

STIPULATED FACTS

The appellee would agree with the "Stipulated Facts" as quoted from the pretrial proceedings on Page 2 of Appellant's Brief. Appellee would however not agree with all of the statements on pages 3-8 of Appellant's Brief which are labelled "Stipulated Facts". The appellees "Statement of the Case", above, states the facts and evidence with citations to the Appendix.

ARGUMENT

I. THE TRIAL COURT WAS CORRECT IN GRANTING
JUDGMENT IN APPELLEE'S FAVOR

The legal principles governing this case are simple enough, as stated by the Court in *Atchison Topeka & Santa Fe Railway Co. v. Bouziden*, 307 F.2d 230 (C.C.A. 10, 1962) at page 233:

The party who relies on agency has the burden of proving it. [Citations omitted] Agency cannot be established by acts or declarations of the alleged agent. [Citations omitted]

Judged by these evidentiary requirements it is submitted that there was a failure of proof in appellant's case to establish either the existence of an actual or apparent agency which would impose any liability on appellee, Veterans of Foreign Wars of the United States.

The appellee was chartered by an Act of Congress of the United States, 36 U.S.C.A. Sections 111 et seq. (Appellant's Brief pp. 10-13). It is national charitable, non-profit organization. The purposes of the Veterans of Foreign Wars of the United States as a corporate entity are found in Section 113 of 36 USCA, where it is stated "The purposes of this corporation shall be fraternal, patriotic, historical and educational; . . ." The appellee national organization was authorized to issue charters to local posts. Such a charter was issued to VFW Post 8316 in Saigon, Vietnam, sometime prior to January or February, 1966. Charles Phillips was elected commander of Post 8316 in Saigon, Vietnam, by the membership of that Post. In January or February of 1966, Mr. Phillips met with Mr. Renieri, sales manager of Sarl Electronics, Ltd., the appellant, and requested credit to purchase beverage coolers, ice machines, tables, chairs, bar equipment, slot machines and beer and whiskey. It is not alleged by the appellant that Mr. Phillips was, in fact, or that he held himself out to be an officer or employee of the Veterans of Foreign Wars of the United States. He said he was

merely the Commander of VFW Post 8316 in Saigon, Vietnam. He can therefore only be said to have been the representative of the local post and its members and was not authorized to bind the national corporation by his acts. Mr. Renieri, appellant's sales manager, testified that he would have to check with his manager before he could extend credit to Mr. Phillips. Appellant's witness, Mr. Renieri, further testified that he extended credit to VFW Post 8316 and not to appellee, the Veterans of Foreign Wars of the United States. Because of the importance of this critical admission, the colloquy is set down verbatim.

"By Mr. Magee:

Q. I just ask you the question, in extending the credits which you have described on behalf of Sarl Electronics, Limited to the post of the Veterans of Foreign Wars of the United States, to whom did you extend this credit?

A. To the VFW Post 8316.

THE COURT: VFW What?

THE WITNESS: 8316, your honor." (App. 33)

Thus, appellant's own employee, and the person acting for appellant in this instance, clearly and unequivocally, stated that he relied on the credit of VFW Post 8316 and not on the credit of the Veterans of Foreign Wars of the United States. For appellant to now attempt to claim it extended credit to appellee is contrary to the evidence adduced by its own counsel from its own witness. To further corroborate Mr. Renieri's statement under oath that he relied on the credit of VFW Post 8316 were his actions in having himself elected to the Board of Trustees of that Post. Mr. Renieri stated the reason he was on the Board of Trustees of the Post 8316 was to "oversee" the operation and to protect his employer's investment in the local post. If in fact credit had been extended to the Veterans of Foreign Wars of the United States it would have been unnecessary for him to be on the Board of Trustees of VFW Post 8316.

The appellant in its brief argues that the "club" activities of the VFW Post 8316 were "authorized corporate activities". (Appellant's Brief, p. 14) Appellant also alleges that the appellee authorized the use of its name, seal and symbols. (Appellant's Brief, p. 14-15) No evidence was introduced to substantiate these allegations. Moreover, there was no evidence that Mr. Renieri, appellant's employee, ever relied upon appellee's name, seal or symbols.

Appellant's reliance on the case of *In Re. Emil Hubsch Post No. 596*, 278 App Div. 460, 106 NYS 2d 727, is misplaced. That case merely held that a *local post* of the Veterans of Foreign Wars, No. 596, was not excluded from paying unemployment insurance benefits because the local post was not engaged in "exclusively charitable" activities under a state statute. The Court there held that no liability whatever attached to the Veterans of Foreign Wars of the United States for the payment of these insurance benefits. It was held only that the *local post* was responsible for them. It is submitted in the present case that any liability for the goods and services purchased here lies with the local post 8316 in Saigon, Vietnam.

II. VFW POST 8316 HAD NO ACTUAL OR APPARENT AUTHORITY TO PLEDGE THE CREDIT OF APPELLEE

No evidence was adduced at the trial which showed any *actual* authority of VFW Post 8316 to make purchases on behalf of appellee, Veterans of Foreign Wars of the United States. Certainly the charter issued by appellee conferred no actual authority on VFW Post 8316 to make any purchases on its behalf. It should also be noted that very little, if any, discretion is left to the national organization as to who is admitted as a member of the Veterans of Foreign Wars of the United States. The requirements for membership in the Veterans of Foreign Wars of the United States were set by Congress in 36 U.S.C.A., Section 115. (Appellant's Brief, p. 12) It was there provided that a person can be a member if:

(1) He has served honorably in the Armed Forces of the United States of America in any foreign war, insurrection or expedition, and,

(2) Which service shall be recognized as campaign-medal service.

There is therefore no choice left with the Veterans of Foreign Wars of the United States but to grant the request for membership if the basic requirements noted above are met. Consequently, it is submitted that the mere granting of a charter to a group of members who meet the requirements set by Congress can under no stretch of the imagination constitute *actual* authority on behalf of a local post to bind the national organization for purchases made by the local post.

There was likewise no evidence tending to show appellee created any "apparent authority" in VFW Post 8316 to make purchases on its credit. There was no evidence showing that appellee "clothed Post 8316 with its exclusive emblems and badges" as claimed by appellant. (Appellant's Brief, p. 18) But it is submitted that even if there were such evidence this does not constitute apparent authority to make purchases in its name. Moreover, the fact that appellee issued an order cancelling VFW Post 8316 in October, 1966 (App. 62) could in no way be interpreted as creating any "apparent authority" since that act occurred *after* the alleged purchases were made and could not be said to be a *prior* act by appellee upon which appellant had relied.

It should be noted in this regard that in order for a principal to be bound by the "apparent authority" of its agent not only must the principal by its *affirmative act* hold out the agent as possessing the authority exercised, but that in addition, that a third person knew of the facts and acting in good faith and with reasonable care, *relied* on such appearance of authority. 3 *American Jurisprudence 2nd*, Agency, sec. 75. Here the evidence is clear that the appellant's employee, Mr. Renieri, in extending credit for the

purchases, relied on the credit of VFW Post 8316, and not on the appellee. (App. 33) It is plain that appellant dealt with VFW Post 8316 as a principal; it cannot be allowed to now set up an alleged agent's apparent authority in an attempt to establish the liability of appellee as a principal.

In this connection, the decision in the case of *Commercial Credit Corporation v. Stan Cross Buick, Inc.*, 343 Mass 622, 180 NE 2d 88 (1962) seems applicable. In that case the issue was whether an auto dealer had apparent authority to sell an automobile where he was acting as a bailee. The court stated at 180 NE 2d 91:

The defendant's contention that Lloyd had apparent authority to sell the car is answered by the rule that a third person cannot set up an apparent authority unless he relied on it when he entered into the transaction; and also by the rule that a person who deals with an agent not as agent but as principal cannot set up an apparent authority which the agent may be said to have. *Essex County Acceptance Corp. v. Pierce-Arrow Sales Co. of Boston*, 288 Mass 270, 276, 192 NE 604, 607, 95 ALR 1314—*Restatement 2d: Agency*, Sections 8, 27.

It is submitted that appellant's citation of *United States v. Acme Process Equipment Co.*, 385 US 138, 87 S.Ct. 350 (1966) (Appellant's Brief, p. 19), and *Tel-Ads, Inc. v. Trans-Lux Playhouse, Inc.*, 232 F.Supp. 198 (U.S.D.C.D.C. 1964), (Appellant's Brief, p. 20) are not helpful to the decision of this case. Both cases involve *employees* of corporations whose actions it was held bound the corporations. In the *Acme* case, *supra*, it was held that a general manager and other responsible officials of the corporation could hold their employer liable for their actions. The court was careful to point out at pp. 147, 356:

". . . Acme selected those agents to carry on its business . . ."

Not only is it clear in the present case that Mr. Phillips, the person with whom appellants dealt, was not an employee

or officer of the Veterans of Foreign Wars of the United States, but the evidence was uncontradicted that Mr. Phillips was not "selected" by appellee, but was elected by the general membership of VFW Post 8316 in Saigon, Vietnam. In the *Tel-Ads, Inc.* case, *supra*, it was held that an *employee* of defendant corporation who was the "district manager" had apparent authority to enter into a sales promotion scheme involving his employer's theatres which were in his district. The fact that the defending corporation in that case held out *its employee* with the title of "district sales manager" renders that holding inapposite to the present case. And finally, the holding of the court in *Sheet Metal Workers' International Ass'n. v. N.L.R.B.*, 110 US App. D.C. 302, 293 F.2d 141, cert. den. 368 U.S. 896, 82 S.Ct. 172, cited by appellant on pages 19-20 of its brief, apparently turned on certain provisions of the union's constitution which bound the locals. There are no such similar provisions in evidence here, and it is submitted the case is inapplicable to the case at bar.

III. THERE IS NO EVIDENCE THAT APPELLEE RECEIVED BENEFITS FROM PURCHASES MADE BY VFW POST 8316

The evidence is undisputed that certain goods and services were delivered to VFW Post 8316 in Saigon, Vietnam, by appellant. There is however no evidence whatever that appellee received any benefit therefrom. The benefits presumably went to those in charge of the club operation and/or the general membership of VFW Post 8316. There is no evidence whatever that appellant furnished any goods or services to appellee. Appellants assertion that its gambling equipment was "taken over and utilized or disposed of by appellee" (Appellant's Brief, p. 22), is completely without foundation in the record. The cases and authorities therefore cited by appellant in this regard are completely inapposite to the facts of the present case.

CONCLUSION

The Trial Judge's findings are clearly supported by the evidence and the judgment below in favor of the defendant should be affirmed.

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